

THE COLOMBIAN REPARATIONS TREATY

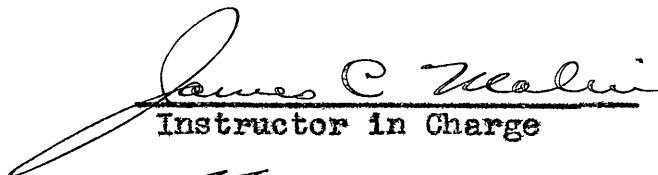
by

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FOREWORD:

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THE COLOMBIAN REPARATIONS TREATY

Introduction

SOURCES AND POINT OF VIEW

A thoroughly satisfactory study of the subject of this thesis is at the present time impossible because much of the material which should be examined has not yet been released from an injunction of secrecy. This disadvantage particularly applies to the Senate proceedings from 1914 to 1921 during which time the discussion of the treaty in the Senate was for the most part behind closed doors. The injunction of secrecy was removed from the treaty itself on June 18, 1914 and on March 14, 1917 the majority and minority reports from the Committee of Foreign Relations were also made public, but with these exceptions the Congressional Record is not particularly illuminating until April 11, 1921 when the final debates began in open Executive Session. The Senate Executive Journals would be of value in supplementing the material in the Congressional Record and in verifying magazine material, but those too are not available, since Volume 32, the last one published, ends with the year 1901.

For diplomatic correspondence concerning the treaty there are two sources of information. The Foreign Relations Volumes issued by the Department of State are of value for the years 1913 to 1917 inclusive, the 1917 vol-

ume having been published in 1926. A student working on the subject several years hence will have the remainder of the Foreign Relations Volumes at his disposal, but the student of the present because of his indebtedness to the famous Teapot Dome Scandal is not so greatly handicapped by this deficiency in diplomatic correspondence as it would seem.

On February 13, 1924 the Senate passed a resolution asking the Secretary of State to submit the diplomatic correspondence in connection with the ratification of the Colombian treaty and the securing of oil concessions for American citizens or corporations organized and doing business in the United States between the Government and Colombia. (1) The resolution was passed in view of the fact that on April 12, 1921, the next day after notice had been given that the Senate would on the day following be asked to take up the treaty with Colombia, two letters of the then Secretary of the Interior, Albert Fall, were presented to the Senate and used in an effort to secure the ratification of the treaty; and in view of the fact that Mr. Fall was charged with fraudulent dealing in connection with the disposal of the naval oil reserves of the United States.

In response to this resolution, Charles E. Hughes, Secretary of State, submitted the requested correspondence to President Coolidge March 13, 1924 and on the day following, (2) the President transmitted it to the Senate. The correspondence is printed as Senate Document No. 64, 68th Con-

gress, first session and covers the years 1914 to 1922. That it is not exhaustive is ascertainable by making a comparison with the Foreign Relations Volumes of 1914 to 1917. How much material has been withheld from 1918 to 1922 it is impossible to state, but a sufficient amount was submitted to throw considerable light on the progress of the treaty.

Senate Documents paralleling the Congressional Record for the period during which the treaty was under discussion are concerned chiefly with the incidents of the Panama Revolution of 1903, with correspondence concerning that event, and with earlier treaties, viz., the Hay-Pauncefote treaties with England, the Hay-Herran treaty with Colombia, the Hay-Bunau-Varilla treaty with Panama and the Root tripartite treaties with Colombia. An exhaustive treatment of the Bryan treaty of 1914 would connote a study of these earlier negotiations; however, in the present investigation they have been neglected except for a brief cursory account based upon secondary sources, chief of which is Latané's *United States and Latin America*.

In addition to the data above mentioned, some use has been made of magazine material, although this is not a very prolific source of information, and is valuable by way of corroboration rather than for any additional contribution to the subject matter.

Careful reflection leads to the conclusion that although the idea of reparation strongly pervaded the nego-

tiation of the treaty and was of considerable prominence throughout the course of the treaty in the Senate, the principal factor in arriving at a settlement of differences between Colombia and the United States was the commercial factor.

Certain factions, chiefly Democrats, constantly urged that the United States had wronged Colombia and that a great nation like the United States should set the example for justice and equity in the western hemisphere. In fact in negotiating the treaty, the primary consideration was that of compensation for wrong done. As time went on however, the question of justice became subordinate to the question of expediency.

In 1914 a new element entered into the situation, that of the war and of the desirability of Columbian neutrality. This element increased in strength until in 1917 it was Wilson's sole motive in urging ratification of the treaty, but the same argument militated against ratification as there were persons who would not yield to threats of German influence in Colombia.

Closely associated with the unification of the interests of all the American States in view of the German aggression was the preservation of the ideal of Pan Americanism. Withdrawal from the Pan American Union was threatened by the Colombian Minister on December 2, 1915, failing an early ratification of the treaty, on the ground that membership in the corporation was not under the cir-

(6)
 cumstances in accordance with the national honor. Representing the view point of the United States, Mr. O. S. Payne in the Outlook of April 6, 1921 designated the fact that Pan Americanism was suffering because of the Latin American attitude towards the United States as one of the two reasons for bringing up the treaty again, the other (7) being the ever-recurring commercial reason.

The war ended, and ipso facto the military motive was eliminated. The necessity of protecting American interests in Colombia then became of paramount importance, culminating in the last two years before the ratification of the treaty, in the question of the status of oil concessions granted to Americans in Colombia. To support the contention that trade and commerce occupied first place as motives for coming to an agreement with Colombia several facts will be presented at this point. Many others will be more profitably considered in their proper sequence as the discussion progresses.

First of all it is necessary to establish the fact that Colombian trade was of sufficient importance to justify any great effort in turning it in the direction of the United States. Colombia offered exceptional opportunities for profitable investment of capital. It was more accessible to the United States than any other tropical country and in natural resources and commercial possibilities was unsurpassed by any other northern South American country. Its supply of precious metals, coal, iron,

copper and petroleum were scarcely touched, the supply of building material was practically inexhaustible, and its water power inestimable. Colombia was also one of the greatest drug yielding regions in the world, and furnished valuable fiber plants and dyes. In agriculture, the production of sugar, cotton, cassava, tobacco, bananas, cocoa, rice, maize, beans, tropical fruits, coffee and wheat offered almost unlimited possibilities beyond the comprehension of even the commercially trained individual. On the other hand, the need of Colombia for transportation facilities and agricultural machinery offered a large field for the sale of American products. The fact that Germany and England had secured strong footholds in Colombia would undoubtedly have some weight in inducing the United States to extend her sphere of influence in Colombia.

Phenor J. Eder of the New York office of the Mercantile Bank of the Americas outlined the investment possibilities in Colombia in 1919 under the following general headings: government and public loans, transportation, agriculture and cattle raising, and mining. According to Mr. Eder, with the improved credit standing of Colombia, her outstanding foreign obligations were worthy of the serious consideration of an investor. Moreover, public utilities, particularly transportation lines, were needed in all parts of the country and constituted a fertile field for American enterprise. In the agriculture and cattle industries America had already made some progress.

The United Fruit Company had built up a valuable banana industry in the San Marta region, the Cauca Valley Agricultural Company had a large sugar plantation, the American Colombian Corporation had bought large holdings for development in the Magdalena Valley, and the International Products Company had concessions for a packing house on the Atlantic Coast. In the field of mining, Mr. Eder's report stated that rapid development was expected; the country was one of the largest gold producers and contained the only emerald mines in the world. American interests were increasing platinum production, and not least interesting in view of its later importance, oil prospecting was rapidly increasing and consequential developments were momentarily expected.

The next point to be considered is whether the Colombian attitude towards the United States was of such a nature that it would prevent American commercial activity in that country. In 1913 before any basis of settlement had been agreed upon, scarcely a day passed in Bogotá in which the taking of the Isthmus was not used by editorial writers as the theme for malign attacks against everything American. (13) Arthur Ruhl, who made the statement, went down to Colombia to find out the sentiment of Colombians (14) and Americans in Colombia towards the United States. As one instance of Colombian feeling Mr. Ruhl cited the case of the American who ran the street railroad in Bogotá who was forced by a boycott to sell out and leave the

country. He also reported an interview with an American capitalist who had come to Bogotá to examine the country's possibilities in various industries and who expressed his opinion that investment was contingent upon an entente cordiale.⁽¹⁵⁾ In fact the newspapers were merely reflecting the bitterness and sense of injustice with which the mind of every Colombian was impregnated as he thought of "the Yankee nation, worshiping material success, ignorant of honor, et cetera".⁽¹⁶⁾

Earl Harding, writing for the World's Work after a trip to Panama and Bogotá for the purpose of studying the Panama revolution as a result of the Rainey Resolution to investigate the "taking" of Panama, reported the same intense feeling in Colombia against the United States, a feeling of resentment which was positively inculcated in the minds of the school children and which extended to all Latin America.⁽¹⁷⁾

Francisco Escobar, Consul-General of Colombia to the United States made the statement in 1914 that Americans were forbidden by law to own land along the Atrato River out of fear that the United States might seize the river, and that it was difficult for American capital to find employment in Colombia all contracts since 1903 having gone to Europe.⁽¹⁸⁾

J. M. Vargas Vila, a Colombian novelist of great reputation in Latin America, expressed most dramatically the antagonism of his people to the United States. In his⁽¹⁹⁾

widely circulated book, "The Yankee - Behold the Enemy" he vividly analyzed our country. The cover design showed a caricature of Uncle Sam with a rifle on his shoulder, clutching dollars with hands transformed into claws, a conception of America which the author consistently presented throughout his book. "The United States", he said, "is being converted into a nest of bandits. It is necessary that from Mexico to Cape Horn there be but one brain to combat him, one single arm to resist him, one single heart to hate him. Hate for the Yankee should be our motto since that hate is our duty Who will warn Latin civilization threatened by death in Europe, the Calvary of the Latin race, and about to disappear in America? The Odyssey of Barbarity advances threatening, the conquest advances; but silently and treacherously as the water of a flood in the night The Yankees are giving themselves over to the division and plunder of Latin America Washington stabs Bolivar in the back and robs his treasure The perfidious caress for Latin America comes from the North, cold as the wing of a falcon of Greenland and brutal as the claw of a polar bear Why not make Latin America see what in reality this race and people are? A lustful race, hostile and contemptuous, a countless people, spurious and cruel, insolent and depreciatory toward us, with a monstrous idea of their superiority and an unconquerable desire for conquest What happened in Cuba was but the prologue of a drama, the

conquest of America Wilson and Roosevelt have torn the glorious flag and shake the insolent rag over the sadness of the Latin race of America whom they dream of exterminating, in the savage ferocity of their barbarian souls English imperialism makes for civilization American filibusterism makes for brutality Wherever the Englishman goes, a village is born; wherever the Yankee goes, a race dies Imperialism in the English is a question of intelligence; filibusterism in the Yankees is a question of the stomach Admiration of the Yankee is, in Latin America, the most vivid and profound proof of our degradation."

The emotionalism of one excitable Latin American might not be of great consequence, but Mr. Tancredo Pinochet, a South American sojourning in this country said that most Colombian writers joined Mr. Vila in his "Hymn of Hate" and that there were also Brazilian and Argentinian authors who expressed their fear of American imperialism and the necessity of union against the United States. (20)

Having produced sufficient testimony to the effect that Colombian and Latin American antagonism towards the United States was strong enough to prevent friendly relations, commercial and otherwise, the last consideration is whether the United States had any clearly designed commercial policy with reference to Latin America and whether there was any appeal to this argument in an effort to negotiate and ratify the treaty. President Wilson in his

speech before the Commercial Congress at Mobile, Alabama extended the interpretation of the Monroe Doctrine to mean not only American opposition to European territorial expansion on the American Continent, but also to the exploitation of commercial enterprises by European capitalists. In September, 1913 when Lord Murray as representative of the Eagle Oil Company announced that he had abandoned the oil concession he had obtained in Colombia, the American press greeted his withdrawal as a victory for the new American policy. The New York Times on September 28, 1913 said "If Colombia was influenced to reconsider her intention to make important oil-field concessions to an English Company, the congratulations offered to her will be due also to Mr. Wilson. The first fruits of his good counsel are important and Colombia's example is one that may be generally followed with advantage." (22)

According to the New York World exactly a month later, the Wilson Doctrine again operated successfully when the Pearson Syndicate abandoned its extensive scheme of exploitation in Colombia. It was prophesied however that in view of the distrust which the Wilson policy was exciting throughout South America, in view of the fact that the Latin American Republic could obtain more favorable loans in Europe than America and also because of the fact that European capital had made possible the development of the South American States, it would not be easy to persuade South America to abandon Europe merely to enable us

(24)

to extend the sphere of the Monroe Doctrine.

As to the use made of the commercial argument in ratifying the treaty, Colombian diplomats from time to time in their correspondence urged the necessity of ratification as a preliminary to the granting of privileges to American would-be investors in Colombia, reminding the United States Government of hundreds of applications for concessions of various sorts which had been postponed until a friendly understanding should prevail between the two countries.

On the part of the United States, the same argument was frequently used by magazine writers and by Senators in their debates on the floor of the United States Senate. After the war, trade between the United States and Europe gradually decreased and Senators were cognizant of the fact that it was becoming more and more necessary to extend American commerce in the western hemisphere. In the last nine days of debate, pressure from commercial interests, especially oil interests, apparently became the compelling factor in securing a tardy recognition of Colombia's claims. The correctness of the theory that the economic motive superseded other considerations in finally arriving at a settlement of differences between the United States and Colombia will become clearer to the reader as the story unfolds.

CHAPTER I

HISTORICAL BACKGROUND

A judgment of the validity of the Colombian claims against the United States is facilitated by a study of the successive steps in the relationship between Panama and Colombia, by a knowledge of the negotiations between Colombia and the United States prior to 1903, and by an investigation of the part which the United States played in the Panama Revolution. As this thesis is primarily concerned with the history of the Bryan treaty, the necessary background is supplied almost entirely from secondary material, and is therefore subject to error.

In 1819 Venezuela, New Granada, and Ecuador declared themselves free of the sovereignty of Spain and assumed the title of New Granada. At this time the Central American Isthmus still remained under the rule of Spain and did not break away until 1821 when Panama and Veraguas decided to join themselves to the Republic of Granada. Dissatisfaction resulted and in 1830 when Venezuela, Ecuador and New Granada became separate states it was only out of deference to the wishes of General Bolivar that Panama was prevented from declaring its independence from Bogotá. The dissatisfaction increased until 1840 when by process of revolution Panama became independent,

(1)
 a position it maintained for two years. At the end of that time Panama was brought back into the confederation under promise of better treatment, but the promises were broken, resulting in a continuous state of civil war until 1855. In that year a new constitution issued at Bogotá recognized Panama as a self governing state in theory (2) if not in practice. The Granadine Confederation was changed in 1861 to the United States of Colombia following a convention with Panama in which the latter became one of the sovereign states of the federation, reserving the right to approve or disapprove the compact if the neutrality granted the Isthmus by the treaty of 1846 between Colombia and the United States was not recognized in case of (3) domestic troubles. In 1885 Colombia terminated the sovereignty of the Isthmus without its consent and from that time till November 1903 Panama was kept in subjugation (4) by force.

It was this historical review of the Panama-Colombian controversy which led Mr. Willard Schoff, Secretary of the Commercial Museum at Philadelphia and student of South American history to declare that since Panama was independent in origin, was historically a separate political community and reserved its rights of sovereignty in its federation with other states of Colombia, it was entitled in 1903 to rebel against the fraudulently imposed rule of (5) Colombia and declare its independence.

The project for a canal dates back about four hundred

years before its actual construction. Time had proved that private effort was inadequate for so gigantic an undertaking and since European governments were eliminated by the Monroe Doctrine and the United States was the only American government strong enough to carry out such an enterprise, it was mandatory that the United States should fulfill her mission. The Clayton-Bulwer Treaty of 1850 which provided that neither country would obtain or maintain any control over an isthmian canal without the other was an obstruction in the way of the American government.⁽⁵⁾ Without any great difficulty the abrogation of the Clayton-Bulwer treaty was secured and the Hay-Pauncefote treaty arranged to supersede it.⁽⁶⁾ The way was thus opened for the United States to construct a canal as soon as Congress should select a location.

Interest had been divided between the Nicaragua and Panama routes. Roosevelt favored the latter, and Colombia too was anxious that the canal should go through her territory, the Colombian minister pointing out that the way through Nicaragua was "longer, more expensive both in construction and maintenance, and less adapted to the commerce of the world than the short and half-finished canal available at Panama".⁽⁷⁾ The Panama Canal Company was exorbitant in its demands, having asked \$109,000,000 for its rights, the value of which had been estimated by the Walker Commission at \$40,000,000. Because of this excessive price, a bill in favor of the Nicaragua route passed the

House of Representatives on January 8, 1902. At the crucial moment the Panama Company reduced its price to \$40,000,000 and the Spooner amendment was added to the House bill.⁽⁸⁾

The Spooner Amendment which was approved by the President June 28, 1902⁽⁹⁾ authorized the President to acquire at a cost not exceeding \$40,000,000 the "rights, privileges, franchises, concessions and other property of the New Panama Canal Company" including its interest in the Panama Railroad Company and to secure from Colombia control of a strip of land six miles wide to be used for the construction of a canal, such control to include whatever police and sanitary jurisdiction would be necessary to preserve order and to maintain the public health. However if the President should not be able to make such acquisition "within a reasonable time and upon reasonable terms"⁽¹⁰⁾ he should revert to Nicaragua.

As soon as the Spooner law was signed, John Hay, Roosevelt's Secretary of State, and Mr. Herran, the Colombian chargé d'affaires, began negotiations which culminated in what is known as the Hay-Herran Convention of January 22, 1903, by which the United States was to pay Colombia \$10,000,000 cash, and beginning nine years after the date of ratification, an annuity of \$250,000 a year in return for which Colombia leased to the United States a strip six miles wide across the Isthmus of Panama⁽¹¹⁾ and authorized the new Panama Canal Company to transfer its

(12)
rights and concessions.

The United States objected to the lack of full control of the canal zone, but in spite of opposition, the treaty was ratified in the United States Senate March 17, 1903. The Colombian Congress rejected the treaty by a unanimous vote of all the Senators present (13) on August 12, 1903 in spite of warnings by the United States that rejection would be considered as an unfriendly act. A letter from Hay to the American Minister at Bogotá was read in the Colombian Senate's secret session on July 4, 1903 which stated: "The Colombian government apparently does not appreciate the gravity of the situation. If Colombia should now reject the treaty or unduly delay its ratification, the friendly understanding between the two countries would be so seriously compromised that action might be taken by Congress next winter which every friend of Colombia would regret." (14) And on August 5, 1903 the United States Minister at Bogotá wrote to the Colombian Minister of Foreign Affairs as follows: "I may say that the antecedent circumstances of the whole negotiation of the canal treaty, from official information in the hands of my government are of such a nature as to fully warrant the United States in considering any modification whatever of the terms of the treaty as practically a breach of faith on the part of the Government of Colombia, such as may involve the gravest complications in the friendly relations which have hitherto existed be-

tween the two countries." The Colombian Senate claimed that after these warnings they had to refuse the treaty to save their dignity and honor and because of the pressure of public opinion, but Roosevelt accused them of being inspired by motives of an "anti-social nature" and by cupidity, hoping at a later date to secure better terms. That it would have been possible for the Colombian government to secure ratification appears to be evident from President Marroquin's offer of November 6. On that date the American Minister Beaupré cabled the Department of State that Marroquin's government would "declare martial law, and by virtue of vested constitutional authority when public order is disturbed, will approve by decree the treaty, or, if the Government of the United States prefers, will call extra sessions of Congress, with new and friendly members, next May to approve the treaty".⁽¹⁶⁾

Panama had naturally been very much interested in the success of the treaty as it would have meant much to her future prosperity. When it was rejected citizens of Panama, in disappointment at the outcome, inquired of the agents of the Panama Railway as to the advisability of a revolution, and shortly afterwards sent Dr. Amador to the United States for assistance, but Mr. Hay would not commit the government to support a revolution.⁽¹⁷⁾

Amador's mission was taken up by Senor Philippe Bunau-Varilla, a former chief engineer of the French Canal Company. He saw Secretary Hay, President Roose-

velt and other important government officials, and displayed remarkable advance knowledge of the revolution. (18)

Roosevelt tells us in his Autobiography that when he became convinced that the Hay-Herran treaty would be repudiated by Colombia, he began to consider possibilities of action. He determined in case Panama should remain quiet to recommend to Congress that we should take possession of the Isthmus anyway and start digging the canal; and that he had drawn a draft of his message to this effect. The other possibility, and the more probable one, was that Panama should revolt. The newspapers were full of prophecies of a revolution, and information came also from a more personal source. On October 16, Captain Humphrey and Lieutenant Murphy, two army officers who had returned from Panama, informed Roosevelt that there would undoubtedly be a revolution on the Isthmus, and that they were confident it would take place at the end of October or soon afterwards when the Colombian Congress had adjourned. (19)

Accordingly, Roosevelt, acting under the terms of the treaty of 1846, ordered the Boston, Dixie, Atlanta and Nashville to proceed near the isthmus, keep the transit open and prevent the landing of any armed troops, either government or insurgent, within fifty miles of Panama.

The Nashville arrived off Colon on November 2, and its presence very probably created a situation favorable to revolution as Latané points out in his "United States

(21)
and Latin America".

The exchange of telegrams on November 3 is another proof that the United States government was in close touch with what was happening on the Isthmus. At 3:40 P.M. on that day the following telegram was sent to the American consuls at Panama and Colon: "Uprising on Isthmus reported. Keep department promptly and fully informed. Loomis, acting." At 8:15 a reply was received from the consul at Panama which stated: "No uprising yet. Reported will be in the night. Situation is critical." And at 9:00 P.M. a second telegram was sent saying, "Uprising occurred tonight, 6; no bloodshed. Army and navy officials taken prisoners. Government will be organized tonight." (22)

On November 2, before the Nashville received the order to prevent the landing of armed forces, Colombian troops landed at Colon but were prevented from functioning by the railroad officials. The next day Hubbard, the commander of the Nashville, landed a few marines and persuaded the Colombian troops to re-embark.

On November 6 the new government of Panama was recognized and a week later on November 13, Roosevelt received Bunau-Varilla as an accredited minister from the newly organized state. (23) Secretary Hay and Bunau-Varilla immediately began negotiations which resulted in the canal treaty of November 18, according to which the United States guaranteed the independence of Panama and agreed to pay Panama \$10,000,000 upon the exchange of

ratifications, together with an annual rental of \$250,000 beginning nine years later. Panama also granted to the United States in perpetuity a zone ten miles wide for a canal with full control over the zone and adjacent waters. (24) The treaty was ratified by the Senate on February 23, 1904 (25) and by Panama December 2, 1903. (26) The privileges thus granted to the United States were more liberal than those we would have secured had the Hay-Herran treaty been consummated. This difference in value became important later in constituting the basis of one argument for settling Colombia's claims.

Colombia was very much aggrieved at the part which the United States had taken in the Revolution, and demanded arbitration of the whole question, hoping that their demands would be met because it was the policy of the United States to settle by arbitration all disputes arising from the interpretation of treaties, the Colombian grievance being that we had violated the treaty of 1846 which guaranteed her sovereignty over the Isthmus. (27) The Colombian demand for arbitration was refused by our government however because the questions at issue were of a political nature. (28)

Finally an attempt was made to settle the differences between the two countries by direct negotiation and in January 1909 the Root tripartite treaties were arranged. (29) The Root-Arosemena treaty between the United States and Panama provided that the first annual rental

for the canal zone should be due four years instead of nine years from the date of the Hay-Bunau-Varilla treaty and that the Republic of Panama might transfer to the Republic of Colombia the first ten annual installments due under the aforesaid treaty. The Root-Cortés treaty between the United States and Colombia provided that Colombia should at all times have the privilege of the canal for conveying troops, materials for war and ships of war without paying any duty to the United States even in case of war between Colombia and another country, but not in case of war between Colombia and Panama. Moreover, Colombian products and Colombian mails were admitted to the canal on the same terms as those of the United States. Colombia also accepted the assignment of the ten years' annual rental as provided in the Root-Arosemena treaty, and in return recognized the independence of Panama and released her from obligation for the payment of any part of the external and internal debt of the Republic of Colombia. (31)

Finally, in the Cortés-Arosemena treaty between Colombia and Panama, Panama assigned to Colombia the first ten annual installments alluded to in the other treaties and gave up all claim to any right in the fifty thousand shares of the New Panama Canal Company standing in the name of the Republic of Colombia in Paris, while Colombia recognized the independence of Panama and released her from any liability for the payment of any part of the

(32)
Colombian debt. Colombia rejected the triple treaties,
overthrowing the Colombian administration which had ne-
(33)
gotiated them.

It is noteworthy that the first attempt at settle-
ment was made during the Roosevelt administration, and
that although the payment to Colombia came ostensibly
from Panama, half of the \$2,500,000 was in reality paid
by the United States since Panama received it only through
the amendment of the canal treaty of 1903.

Mr. DuBois, the American Minister to Colombia, ar-
dently espoused the Colombian cause during the Taft ad-
ministration. On September 30, 1912 he made a report to
Secretary Knox in which he made a statement of the Co-
lombian claims and urged that the United States should
speedily make amends to Colombia, emphasizing the fact
that the existing situation hampered trade and pointing
out that Colombia was becoming an important factor in
(34)
the commercial and political life of South America.

The Du Bois report was prepared while he was in
the United States. On his return to Bogotá he proposed
to Colombia (1) that Colombia should ratify the Root treat-
ies, (2) the United States should pay Colombia \$10,000,000
for the Atrato canal route and the lease of Old Provi-
dence and St. Andrews as coaling stations, (3) the United
States should proffer its good offices in adjusting the
Panama-Colombian boundary, (4) the United States consen-
ted to submit to arbitration the reversionary rights in

the Panama Railroad assumed by the United States in the treaty of 1903 and estimated at over sixteen million dollars, and (5) the United States offered Colombia preferential rights in the use of the Panama Canal.⁽³⁵⁾

Colombia rejected the Du Bois offer, demanding arbitration of the whole question or a direct offer by the United States to compensate Colombia for "moral, physical, and financial losses sustained as a result of the separation of Panama."

Du Bois' second proposal, which was also refused, was to the effect that the United States would make the same concessions as had been made before but would ask nothing in return.⁽³⁶⁾

Finally Du Bois inquired on his own authority and not by authorization of his government whether \$25,000,000 without options of any kind would be accepted. Colombia refused to consider any settlement except arbitration and Du Bois was therefore instructed on February 20, 1913 to stop negotiations.⁽³⁷⁾

Two Republican administrations had attempted without avail to arrive at some satisfactory basis of settlement with Colombia. Before taking up the more successful efforts of their Democratic successors, to which this thesis is mainly devoted, it is necessary to understand more clearly the basis of the Colombian claims and the position of the United States with reference to them.

CHAPTER II

THE ISSUE

In 1846 a treaty of amity and commerce was arranged between the United States and New Granada, article 35 of which has acquired considerable significance, having been used by both Colombia and the United States as a basis for their arguments, the United States justifying her conduct under the treaty, and Colombia claiming that the acts of the United States in 1903 were in contravention of the treaty. The position of the treaty which is germane to the discussion states that "The Government of New Granada guarantees to the Government of the United States that the right of way or transit across the Isthmus of Panama upon any modes of communication that now exist, or that may be hereafter constructed, shall be open and free to the Government and citizens of the United States, and, in order to secure to themselves the tranquil and constant enjoyment of these advantages, and as an especial compensation for the said advantages and for the favors they have acquired by the 4th, 5th, and 6th articles of this treaty, the United States guarantee positively and efficaciously to New Granada by the present stipulation the perfect neutrality of the before mentioned Isthmus with the view that the free transit from the one to the other sea may not be interrupted

or embarrassed in any future time while this treaty exists, and in consequence, the United States also guarantee in the same manner the rights of sovereignty and property which New Granada has and possesses over the said territory."⁽¹⁾

Colombia made her first formal statement of grievance through General Rafael Reyes December 23, 1903. General Reyes stated that " The Government and people of Colombia consider themselves aggrieved by that of the United States in that they are convinced that the course followed by its administration in relation to the events that have developed and recently been accomplished at Panama has worked deep injury to their interests."⁽²⁾ He then proceeded to enumerate special points of grievance. His claim that the Congress of Colombia in disapproving the Hay-Herran convention exercised the same right which the Senate of the United States enjoyed seems substantially correct.⁽³⁾ That the Colombian Senate would have approved the Convention with amendments had not the American Minister refused to allow them to use that prerogative is however open to question.⁽⁴⁾ General Reyes was decidedly naive in his admission that Colombia thought that according to the Spooner Act which had served as a basis for the treaty, the worst evil which could befall Colombia would be the adoption of the Nicaragua route.⁽⁵⁾

General Reyes further stated that the United States prematurely recognized the independence of Panama, an

offense against Colombia according to international law and a formal attack upon her wealth as Panama was her richest province; that, according to the reports of American newspapers, officials of the United States Government had conferred with the author of the revolution before it was a fait accompli; and that a New York bank had opened credit in favor of the promoters of the revolution. (6) Equally as important was the fact that regardless of the treaty of 1846 a military officer of the United States prevented the Panama Railroad from carrying troops to Panama to suppress the revolutionary attempt (7) and that the United States forcibly prohibited the landing of troops where they were necessary to restore order on the Isthmus. (8) Another important point made was that the transfer made by the French Company and the Panama Railroad Company was illegal without Colombian consent. With this reminder of the cloud upon their title, the General expressed his belief in the justice of the United States and closed by asking that the Colombian claims should be submitted to the Hague Tribunal for arbitration. (9)

John Hay, the American Secretary of State answered General Reyes in his famous letter of January 5, 1904 which still stands as the best statement of the American position from the standpoint of both logic and justice. (10) The letter is eminently worth reading in full and because every statement in it is relevant to the question it is difficult to summarize. Mr. Hay first called at-

tention to the fact that the questions submitted could be viewed only in the light of accomplished facts since the independence of Panama had already been recognized by eighteen nations including, besides European and Asiatic nations, even some of Colombia's sister republics in South America. (11) Concerning the recognition of newly organized foreign nations Mr. Hay said that international law did not prescribe any definite time for recognition, and that history showed that whatever the length of time which had elapsed, the parent state usually complained. (12)

The answer to the charge that the United States was unduly active in the Panama revolution was in no uncertain terms. "Any charge," said Mr. Hay, "that this Government or any responsible member of it held intercourse, whether official or unofficial, with agents of revolution in Colombia is utterly without justification. Equally so is the insinuation that any action of the Government prior to the revolution in Panama was the result of complicity with the plans of the revolutionists. The department sees fit to make these denials and to make them finally. The origin of the Republic of Panama and the reasons for its independent existence may be traced in certain acts of the Government of Colombia, which are matters of official record." (13)

The next important point in the letter was that the Colombian excuse for repudiating the Hay-Herran treaty,

that it was unconstitutional because it ceded Colombian sovereignty to the United States, was invalid since the treaty expressly declared: "The United States freely acknowledges and recognizes this sovereignty (of Colombia) and disavows any intention to impair it in any way whatever or to increase its territory at the expense of Colombia or of any of the sister Republics in Central or South America; but, on the contrary it desires to strengthen the power of the Republics on this Continent and to promote, develop, and maintain their prosperity and independence."⁽¹⁴⁾ The Hay-Herran treaty also re-affirmed article 35 of the treaty of 1846 which was a further guarantee⁽¹⁵⁾ of Colombian sovereignty.

Mr. Hay stated that Colombia had acted in violation of the rule of treaties which required that a Government which had concluded a treaty should do nothing to hinder the consummation of the same. Colombia turned the treaty over to her Congress with the statement that the Government "had no preconceived wishes for or against the measure,"⁽¹⁶⁾ a declaration which considered in connection with Colombian conduct with reference to the transfer of the canal company's rights was virtually an invitation to opposition.

The terms of the 1878 concession of the Panama Canal Company required that the company could not transfer its rights without the consent of the Colombian Government. Because of that stipulation the Hay-Herran treaty had expressly incorporated the necessary permission. Afterwards

the Colombian Government sent notices to the canal and railroad companies requiring them to cancel all obligations of Colombia to them, which cancellation would mean that the rights transferred to the United States were non-existent.⁽¹⁷⁾

Dr. Herran gave as reasons for rejecting the treaty the impairment of Colombian sovereignty and the absence of a previous agreement with the Canal Company for the transfer of its concessions which were according to Mr. Hay's reasoning without any force whatsoever.⁽¹⁸⁾ That the Colombian Congress would arrange for new negotiations was also a false statement because they indefinitely postponed further negotiations for the very evident reason that they wished to wait until December 31, 1904 when the concession to the Panama Canal Company should have expired and Colombia could force her own terms.⁽¹⁹⁾

General Reyes had according to his own declaration made use of the newspapers in framing his charges against the United States. Mr. Hay was consequently warranted in his inference that the Colombians might have depended upon the same source for information concerning the extreme probability of a revolution on the Isthmus and that it was therefore their own blindness which led them to think that the United States would abandon the Panama route. The United States was informed of the situation through the press and took steps to meet the threatening trouble as she had done in 1901 and 1902 and as the treaty

(20)
of 1846 obliged her to do.

The most interesting part of Mr. Hay's letter was his interpretation of the treaty of 1846. The fundamental purpose of the treaty, he declared, was to assume the construction of an interoceanic canal; (21) the guaranty by the United States of the neutrality of the Isthmus and of Colombia's sovereignty over it was for this reason only; (22) and an understanding to that effect had always obtained. Moreover it was clearly understood that the treaty obligated the United States to protect Colombia only against foreign attacks and not against domestic (23) insurrections. And finally, Colombia had not kept her part of the bargain, which was to guarantee free and open transit across the Isthmus. In fact, the United States had secured the advantages of the treaty of 1846 (24) only through her own efforts.

In recognizing the independence of Panama, the Government of the United States was again acting in accordance with the treaty of 1846 for the rights and sovereignty of Colombia over the Isthmus had passed from Colombia to Panama according to Mr. Hay's reasoning. As he quoted Rivier's Principes du Droit des Gens in which it is stated "that treaties relating to boundaries, to watercourses, and to ways of communication constitute obligations which are connected with the territory and (25) follow it through the mutations of national ownerships."

After having at length disavowed the validity of

any of the Colombian complaints against the United States, Mr. Hay assured them that he realized that Colombia has suffered considerable loss and that his government would gladly do whatever it could to improve her conditions, but that it would be impossible to yield to the request to submit the matter to the Hague Tribunal since the question was of a political nature and was therefore not a proper subject of arbitration.⁽²⁶⁾

Alfred T. Mahan considered Mr. Hay's approval as particularly valuable because it carried with it the weight of his recognized character for "uprightness, moderation and ability, undimmed by the necessity of self-defense since the responsibility was entirely Roosevelt's".⁽²⁷⁾ In his analysis of the controversy between Colombia and the United States, Mr. Mahan built up an exceedingly ingenious chain of arguments to prove that the United States was entirely within the law in 1903. He maintained that the words "in the same manner" in the treaty of 1846 meant that the object of the guaranty of rights of sovereignty and property could be extended only so far as was necessary for the security of transit for the United States which security was the fundamental purpose of the treaty and therefore the determining factor in its legal construction.⁽²⁸⁾ In any event since the interpretation of Mr. Seward and Hamilton Fish, that the treaty applied only to foreign invasion and not to domestic insurrection, had been tacitly approved by Colombia and since the question of 1903 was a question of⁽²⁹⁾

domestic insurrection, the treaty did not govern the case and the United States was not bound to help suppress the
 (30)
 revolt. Concerning the other principal point of discussion, the recognition of Panama, Mr. Mahan again agreed with Mr. Hay that international law did not prescribe any definite time for the recognition of a new state and that although it was usually conceded that the new government must be organized and must have established its permanency, these
 (31)
 elements were not legally essential.

Having established the legality of the conduct of the American government, Mr. Mahan then reviewed it from the standpoint of moral considerations, in which connection he advanced the argument that "the greatest good to the
 (32)
 greatest number" should be a controlling factor, and that the ejection of Colombia from property which was a world concern and which she could not herself improve was simply a repetition of the story of India, Egypt, Persia, Tripoli,
 (33)
 Tunis, Algiers and Morocco.

Roosevelt spoke in his own defense in his messages to Congress of December 1903 and January 1904 and again in magazine articles and in his Autobiography, but though his statements were characteristically vigorous and unequivocal, the historian can more definitely rely upon the necessarily less biased judgment of an impartial observer, especially if that judgment is made by one so well qualified to express himself on international affairs as is Alfred T. Mahan.

CHAPTER III

THE NEGOTIATION OF THE BRYAN TREATY

Notwithstanding the fact that the Government of Colombia had frankly expressed its desire to deal with the incoming Democratic administration, Mr. Bryan, the new Secretary of State did not show any undue haste in justifying Colombian faith. It was the fifteenth of April, 1913 before Bryan answered Mr. Betancourt's note of February 28 in which the letter had again stated arbitration to be the only satisfactory settlement. Mr. Bryan urged the pressure of business as a reason for the delay and further postponed negotiations pending a full study of the question. ⁽¹⁾ The Colombian minister at Washington, Julio Betancourt, was exceedingly zealous in his labors to effectuate an agreement, and having given Mr. Bryan a fortnight for consideration, on May 3, in a lengthy communication, he again set forth his hopes of securing arbitration, (1) because of Taft's advocacy of using arbitration as the method of settling all international disputes, (2) because of his belief in Bryan's sense of justice, and (3) because it was advocated at the Washington conference that differences between the republics of North, Central, and South America, particularly those which involved diplomatic or consular privileges, boundaries, territories, the right of navigation and the validity, construction, and enforcement

(2)
of treaties, should be settled by arbitration. He also pointed out that the way in which the United States met the present situation would determine its attitude towards the rights of small nations, its stand on that principle of international law which declared the equality of
(3)
all states, great or small. Mr. Betancourt proceeded to quote from the Honorable Augustus O. Bacon, once chairman of the Senate Committee on Foreign Relations, to substantiate his contention that the controversy was a proper subject for arbitration. The United States had claimed that when Panama seceded and her independence was acknowledged, the rights of Colombia under the treaty of 1846 inured to Panama and that the United States was thereby obligated to
(4)
protect Panama's sovereignty in the Isthmus. Mr. Betancourt did not agree with the American interpretation of the treaty, which, he stated, did not say that the United States guaranteed any sovereignty that might impose itself on the Isthmus, but "the rights of sovereignty and property which New Granada has and possesses over the said territory".
(5)
The letter at this point cited several precedents in which the United States had accepted arbitration, reminded the Secretary of State of Article 38 of the Hague Convention of October 18, 1907 which provides that all disputes over the "interpretation, execution,
and violation of public treaties" must be submitted to arbitration, and closed by begging that the question be sub-
(6)
mitted to the Hague Tribunal. The entreaty of the Colombian

minister was ignored by the United States government until July 18, when it was summarily disposed of by a request for direct negotiations.

The Colombian people were still apparently hopeful of securing justice, for the Colombian President, Don Carlos E. Restrepo, in his message of July 20 to the Colombian Congress commended the new administration, the appointment of Mr. Thaddeus Thomson as American Minister to Colombia, and the conduct of Senator Hitchcock and Representative Rainey, advocates of the Colombian cause. The President implied, however, that the delay was not pleasing in his statement that an understanding with the United States was imperative because the time for the opening of the canal was rapidly approaching. Restrepo's opinions were echoed by the Colombian Minister of Foreign Affairs in his Memorial to Congress delivered on the same day as the message of the President. He spoke of Wilson and Bryan as champions of the cause of social and international justice and remarked that "now they have become members of the government, they will surely carry out the principles of their public utterances".

In September affairs between the two countries began to move a little faster. Mr. Francisco Escobar, Consul-General in New York, and some North Americans not officially concerned carried on propaganda of various kinds at this time which accelerated the progress of negotiations. Mr. Thomson and the Colombian Minister of Foreign Affairs had

a conference on September 23, in which Colombia insisted that the price of accepting direct negotiations in lieu of arbitration would have to be that the transaction should take place at Bogotá, that the United States would have to forego any territorial options and concessions for coaling stations, and that a moral reparation should be incorporated in the treaty. Moreover, Colombia was not permanently abandoning her demand for arbitration, but would (11) return to it if direct negotiations failed.

On September 29, Bryan telegraphed to the American Minister at Bogotá an offer which was to be made immediately to the Colombian Government. The offer stated that the government and people of the United States were desirous that things marring the friendship between Colombia and the United States be cleared away; that they wished to set at rest the differences arising between the two countries in connection with the reparation for losses, both moral and material, suffered by Colombia on account of the circumstances under which the United States acquired Panama; and that therefore the government of the United States offered Colombia \$20,000,000 in full settlement of all (12) claims of Colombia against the United States or Panama. The desire to clear away all things marring the friendship between Colombia and the United States and the reference to reparation for moral losses were stated in language which was tantamount to a confession of wrong-doing practically as explicit as the much mooted regret clause of

the accepted treaty.

Notification of Colombian counter proposals was sent by the American Minister in Bogota' to Mr. Bryan on October 8 with the information that they would contain four points: (1) moral reparation, (2) preferential privileges in the canal, (3) fixation of the boundary line, and (4) money indemnification. The same information had been conveyed to the United States legation by the Colombian Minister of Foreign Affairs in a letter of October 6.⁽¹³⁾

In accordance with the previous notification, on October 23, Dr. Urrutia, Colombian Minister of Foreign Affairs, submitted the following proposals through Mr. Thomson, the American Minister, asking that they be considered merely as an informal expression of opinion: The preamble stated that both nations desired to put an end to the differences resulting from the events of November, 1903, wished to regulate their rights in the use of the canal and restore reciprocal relations of friendship. Article I provided that "the Government of the United States of America in its own name and in the name of the people of the United States sincerely regrets and invites the Government and people of Colombia to forget anything that may have occurred to mar or to interrupt the close and long established friendship existing between the two nations" and further stated that the United States wished to make reparation for the losses which Colombia sustained in connection with the events of 1903 which resulted in the sit-

uation "enjoyed by the United States in the Isthmus of
 Panama"⁽¹⁴⁾. Article II contained seven provisions relating
 to the use of the canal and the Panama Railroad by Colom-
 bia.⁽¹⁵⁾

(1) Colombia was to pay no duty to the United States for the passage of ships, troops and materials of war even in case of war between Colombia and another country.

(2) Colombian products and products destined to Colombian ports for Colombian consumption, and likewise Colombian mails, were to be free of all canal duties.

(3) Colombian citizens were exempt from all duties on crossing the canal zone.

(4) Products of the soil and industries of Colombia were to be admitted to the canal zone, islands and mainlands auxiliary thereto under the same terms as those of the United States.

(5) Whenever canal traffic should be interrupted Colombia might use the Panama Railroad under the same regulations that governed the United States.

(6) Officers, agents and employees of Colombia were entitled at all times to free transportation on the Panama Railroad, and

(7) Colombian sea-salt and coal were free of any railroad charges except the cost of transportation and handling not to exceed one half the lowest freight charges made against the United States for products of the United States passing over the Railroad from one post of the Uni-

ted States to another.

Article III designated the 79th longitude west of Greenwich as the Colombian-Panama boundary line, and Article IV provided for a \$50,000,000 indemnity. Mr. Thomson said that he had urged Dr. Urrutia not to demand greater privileges in the use of the canal than those enjoyed by the United States, to mark the boundary according to the Colombian law of 1855 and to restrict the indemnity to \$20,000,000. Thomson felt the necessity of retaining the regret clause, however, and hoped that the United States
(16)
would accept it.

The first article of the Colombian proposal just quoted is the first instance of the regret clause in the published diplomatic correspondence, but the Secretary of State declared according to the Washington Post of June 21, 1914 that the previous administration had made exactly
(17)
the same offers he had made, and although the Republicans challenged the Democrats to produce any document containing specific expressions of regret for the secession of Panama, Mr. Betancourt made an official statement to the press in which he said, as appeared in the June 20 edition of the Washington Post, that Du Bois submitted a memorandum to the Colombian Government, the exact words of which were: "The Government and people of the United States sincerely regret the occurrence of the events that in any manner may have changed the long and sincere friendship which existed for almost a century between Colombia and

the United States." The note which contained this expression was supposedly written in February, 1913.⁽¹⁸⁾

A brief memorandum used by the Colombian Committee on Foreign Affairs in estimating the amount of an equitable indemnity was forwarded by Mr. Thomson in a letter to Mr. Bryan of October 25, 1913. A more complete memorandum for the same purpose is undated and is as follows:⁽¹⁹⁾

(1) Colombia renounces 66 annuities of \$250,000 in the Panama Railroad and absolute ownership at the end of the concession. (2) Colombia renounces 99 annuities of \$250,000 and exclusive ownership of the canal at the end of 99 years according to the terms of the canal contract. (3) Colombia renounces the indemnity provided in Article II of the contract of 1876. (4) Colombia renounces Panama, her richest province. (5) The United States in securing the Isthmus was at great advantage because the cost of the Nicaragua route was greater, the Panama canal was shorter, Nicaragua was of a volcanic nature, and the French Company had already done considerable work on the canal. (6) The Colombian treaty will legally confirm the rights of the United States in the canal zone. (7) United States Congressmen have made the statement that an indemnity of \$100,000,000 would not be too much. (8) The value of the portion of the canal completed by the French Company, which value could be estimated at \$40,000,000, the price paid by the United States, belongs to Colombia since the Hay-Herran treaty was not ratified.

Mr. Thomson, because of the illness of his wife, was forced to leave the negotiations in the hands of the Chargé d'affaires, Leland Harrison. Partially because of Thomson's absence and partially because of the plea (20) of other important business by the Secretary of State, an answer to the Colombian counter proposals of October 23 was delayed until December 19 when a draft treaty was sent by the Department of State to the American Charge' (21) d'affaires at Bogota'. Article I which contained the phrase "expresses sincere regret" differed only in language from the previous Colombian proposition. In Article II, section 2, products destined to Colombian ports for Colombian consumption were omitted altogether, and Colombian products and mails instead of being free of all charges were subject to the same terms as those of the United States in the use of the canal. The same change was made in section 3 concerning Colombian citizens crossing the canal zone and likewise for the officers, agents, and employees of Colombia in the use of the railroad, and the further exception was made that the railroad privilege was not granted in case of war between Colombia and Panama. The charges for transportation of Colombian coal and sea-salt were changed from a price not to exceed one half the lowest freight charges on products of the United States passing over the railroad from one part to another of the United States to one-half the ordinary freight charges on those products. Concerning the indemnity, the United States

still insisted upon their former offer of \$20,000,000 and demanded that the boundary question should be settled according to the Colombian law of 1855.

The Colombian reply to the Bryan Peace Proposals of December 19, 1913 was made through Charge' Harrison on
(22)
January 17, 1914 by telegram and more fully on February
(23)
5, 1914.

(22)
The changes made in January were as follows: In section 2 of Article II, Colombian merchant ships were to be admitted to the canal zone on the same basis as merchant ships of the United States of the same class and the provisions of this section were to extend to the islands and lands accessory to the canal zone. In the section providing for the use of the Railroad, after the phrase "whenever canal traffic is interrupted," the words "or whenever it shall be necessary for any other reason to use the Railroad" were to be inserted, thus liberalizing this provision. Petroleum was added to the two products coal and sea-salt and the charge for all three was again to be not in excess of the lowest freight charges of the products of the United States, going back to the Colombian proposal of October 23. Mr. Harrison urged the United States in his accompanying communication to give their reasons for any refusal they might make of the Colombian modifications, inquired concerning a greater indemnity than \$25,000,000 and concerning a compromise on the boundary question.

(23)
In the telegram of February 5, 1914 no additional

change was made in Article II except that in the provision concerning Colombian coal, sea-salt, and petroloum, the word ordinary was again substituted for lowest, thus accepting the draft of December 19. The previous Colombian demand for indemnity had been \$50,000,000. They now asked for \$30,000,000 gold paid within six months after the exchange of ratifications with the addition of an annuity of \$250,000 gold United States money, payable annually for one hundred years from said date. Colombia further recognized the independence of Panama and with a slight exception accepted the Colombian law of June 9, 1855 as the basis of settlement of the boundary dispute. In recognizing Panama as an independent nation Colombia disclaimed any responsibility for any events which had ever taken place in Panama and asked that the United States should use its influence after the pending treaty was ratified to negotiate a treaty between Panama and Colombia.

Mr. Bryan in the name of the United States government on February 28, 1914 notified Mr. Harrison that he could not accept the provision in Article II admitting Colombian merchant ships on the same basis as those of the United States, nor could the troops, materials of war, products and mails of Colombia be transported on the Panama Railroad in case of war between Panama and Colombia. With reference to Article III the Government would make no departure from its previous offer of \$20,000,000 unless it was assured in advance that the offer it made would be ac-

cepted. Relative to Article IV Bryan still insisted on an absolute application of the law of 1855, refused to admit to the treaty Colombia's declination of responsibility for previous events in Panama as a subject which should be negotiated between Panama and Colombia, but consented to proffer the good offices of the United States in bringing about a treaty between Panama and Colombia. (24)

On March 7, 1914 Mr. Thomson transmitted to the Secretary of State the information that Colombia still insisted upon equal treatment for the Colombian merchant marine, and that she held to an indemnity of \$30,000,000 cash, but would reduce the annuity from one hundred to fifty years. Some slight changes in wording were also suggested and the provision regarding Panama in Article IV was retained. Mr. Bryan in his message to Thomson of March 13 declined to include Colombian merchant ships in the exemption from tolls, stated that \$25,000,000 with no annuity was the final amount of indemnity, and that it prevailed only if accepted in advance of the offer and refused the proviso concerning Panama as it would then be necessary to invite Panama to take part in the negotiations which would cause delay. Mr. Bryan rather impatiently hoped that this would be the final word in the matter. (25)

Colombia accordingly on March 24 withdrew her demand for equal treatment for her merchant marines, but asked for an indemnity of \$25,000,000 six months after the date of ratifications with an additional \$5,000,000 twelve months

(26)
 after that date. Mr. Thomson in transmitting the request assured the United States government, however, that he would be able to settle on a basis of \$25,000,000. In the same note Colombia submitted a new phrasing for the stipulation concerning the part of the United States in the subsequent treaty between Panama and Colombia. Mr. Bryan in his note of March 27, further revised the wording of the last provision which was changed again by Colombia so that it read as follows: "In consideration of this recognition, the Government of the United States immediately after the exchange of ratifications of the present treaty, will take the necessary steps in order to obtain from the Government of Panama the dispatch of a duly accredited agent to negotiate and conclude with the Government of Colombia a treaty of peace and friendship with the view to bring about both the establishment of regular diplomatic relations between Colombia and Panama and the adjustment of all questions of pecuniary liability as between the two countries, in accordance with the recognized principles of law and precedent." The changes in the provision had been purely verbal so that the clauses as quoted had exactly the same meaning as when submitted by Colombia March 24. In the same note, (March 31) Colombia agreed to settle for \$25,000,000 and proposed a fifth article in the following words: "The present treaty shall be approved and ratified by the High Contracting Parties in conformity with their respective laws, and the ratifications thereof shall

be exchanged in the city of Bogota' as soon as may be possible."

With the acceptance on April 2 of Colombia's proposed draft for section 2 of Article IV and for Article V, the terms of settlement were finally agreed upon. Four days later the treaty was formally concluded and signed at Bogota' by the Colombian Minister of Foreign Affairs, the First Designate to exercise the executive power, and five members of the Consultative Committee of the Foreign Office representing all political parties, thus assuring the approval of the Colombian Congress. Thaddeus Thom-
(31)
son signed for the United States which did not by any means assure the approval of the United States Senate. A careful consideration of the successive steps in the negotiation results necessarily in an outline of the treaty as signed on April 6, 1914 and to incorporate the final treaty in the text of the discussion would be merely a duplication of material. However, for the convenience of the reader, the text of the treaty may be found in an appendix at the close of the thesis.

CHAPTER IV

EARLY HISTORY OF THE TREATY

The treaty between the United States and Colombia signed at Bogota April 6, 1914 did not fully meet the approval of Dr. Betancourt, the Colombian Minister, as he frankly admitted in a note to the Secretary of State⁽¹⁾ on April 9. On April 15, however, Thomson notified the State department that the Colombian public was gratified⁽²⁾ at the outcome of the negotiations. The Colombian Senate Committee Report submitted May 6, 1914 favored the ratification of the treaty since there was no hope of persuading the United States to arbitrate the difficulty and since there was no chance of getting aid from other powerful nations.⁽³⁾ A report of a committee of the House of Representatives also favored ratification, exulting particularly in the provisions of the treaty which referred to moral satisfaction.⁽⁴⁾ In their report they included a statement of the chairman of the Committee on Foreign Affairs as follows: "For Colombia it is sufficient that the most powerful nation in the world expresses regret for whatever thing may have been able to alter the mutual good relations, because in these expressions are included all the deeds or events brought to pass in Panama in November 1903."⁽⁵⁾ (This difference between the official English translation of the treaty in which the United States expressed regret "that anything

should have occurred..." was also a subject for comment by Roosevelt in an article in the Outlook for May 23, 1914. He noted that a Spanish scholar writing to the New York Evening Post declared that the correct translation of the Spanish text would be "expresses sincere regret for anything that may have occurred calculated to interrupt..." etc. The difference was only a verbal one, but it added to the apologetic tone of the clause.⁽⁶⁾ These reports of the sentiment of Colombia concerning the so-called apology did not coincide with Mr. Du Bois' statement in an article written July 1, 1914 to the effect that Article I was not an apology and was not so understood by either the United States or Colombia.⁽⁷⁾ Thomson further notified the United States on June 8 to the effect that the Colombian Congress in special session had approved the treaty without amendment. Two days later he was instructed by Colombia to inform his government that the Colombian President had on the previous day sanctioned the law which approved the treaty. That there was some opposition to the terms of the treaty in Colombia was brought out in the attempt of certain individuals to have law number 14 by which Congress approved the treaty pronounced unconstitutional. The Colombian foreign office promptly notified Mr. Thomson of the situation, at the same time expressing their belief that the Supreme Court would have to declare itself disqualified to act, since the treaty-making power rested solely in the executive branch of the government together with

(8)
 the approval of Congress. Their predictions were correct.
 On July 7, the Supreme Court decided that it was incompe-
 tent to consider the constitutionality of the law. (9)

Panama did not seem to be so well satisfied. The President of Panama in his message to the National Assembly September 1, 1914 expressed his regret that Panama had no intervention in the treaty. She felt that she should have been consulted inasmuch as some of her important interests were affected and hoped that the delay in ratification by the United States Senate might be sufficiently long to place Panama in a better position to protect her rights. (10)
 Opposition in Panama could not have been very serious, however, for there is no further record of it to be found.

The little flurry of dis-satisfaction in Colombia and Panama was dwarfed into insignificance by the storm of protest which broke forth in the United States when the treaty was made public. On June 16, William Jennings Bryan, Secretary of State, laid the treaty before President Wilson with a view to having it transmitted to the Senate for ratification. Mr. Wilson sent it to the Senate on the same day where it was given its first reading and referred to the Committee on Foreign Relations together with accompanying papers to be printed for the confidential use of the Senate. (11)
 Two days later the injunction of secrecy was removed from the treaty itself (12) but not from the official discussions of Congressmen nor from the State papers connected

with the case. The delay in submitting the treaty to the Senate was due to the fact that the administration wanted to be assured first of the passage of the canal tolls repeal bill.⁽¹³⁾

June 17, Secretary Bryan personally appeared before the Senate Committee on Foreign Relations to urge favorable action on the treaty.⁽¹⁴⁾ He also made a formal statement to the press on July 12 presenting his reasons for favoring the treaty. He stated that the object of the treaty was to bring about friendly relations with Colombia by acceding to her claim, that it was not necessary to discuss the matter of who was at fault, for the United States as the stronger nation should not only do justice to Colombia, but, in case of doubt as to the justice of the case, be generous enough to resolve that doubt in favor of Colombia.⁽¹⁶⁾ The editors of the Outlook commenting on Mr. Bryan's statements, characterized them as illogical because to speak of doing justice to Colombia by implication placed the guilt with the United States, because there was no generosity in complying with an unjust request and because the treaty would not attain its object - the friendship of Colombia and South America. The Honorable J. Hampton Moore of Pennsylvania in the House of Representatives, July 13, 1914, in sarcastic arguments denounced Bryan's statement of July 12, and in support of his contention that the United States owed Colombia nothing incorporated in his speech Willard Schoff's historical resume of the relation-

ship between Colombia and Panama and of the incidents
(17)
of 1903 which was referred to in a previous chapter.

Several topics engaged the attention of the two governments in the summer of 1914, the question of the use of the indemnity, the malign attacks upon the methods of the Colombian government in conducting the negotiation of the treaty, the question of the necessity of secrecy concerning the deliberations of the Senate and some minor points of interpretation.

Concerning the first question Minister Thomson, June 17, 1914, communicated to the department of State the desire of the Colombian government to expend the indemnity in public works, notably in railroads and the improvement
(18)
and sanitation of ports. The Washington Post June 19, 1914 carried the report that Colombia had been charged with the intention of using the money indemnity to be paid by the
(19)
United States in territorial aggrandisement. Dr. Betancourt
(20)
ridiculed the charges, but that the United States government was seriously concerned was evidenced in the Secretary of State's request to Mr. Thomson, June 24, to inform the department when formal arrangements should be completed
(21)
for spending the indemnity. The charges undoubtedly were propaganda, for the August message of President Don Carlos E. Restrepo to the Colombian Congress urged that the twenty-five million dollars should be used for public
(22)
works of a pressing character.

Dr. Betancourt sent a formal protest to Secretary

Bryan June 29, 1914 against the newspaper charges that Colombia was paying exorbitant retaining fees to Hannis Taylor and other attorneys for their services in case of the ratification of the treaty. Ten days earlier he had issued a similar statement to the Washington Post. The newspapers may have had some basis for their suspicions however. At least Colombia admitted that the success of the treaty negotiations should be partially credited to propaganda of various kinds carried on by Mr. Francisco Escobar, Consul-General in New York and to some other North American agencies outside the regular official circles.

With reference to the secrecy of the negotiations, hearings and Senate debates on the treaty, there was considerable agitation both in the Senate and in the press. The Washington Post, June 21, 1914 stated that the Foreign Relations Committee had been urged to make public all the correspondence and official memoranda concerning the treaty in order to aid the administration and silence the criticism of the Republicans. The publicity advocates maintained that all the facts would show that the last Republican administration attempted to do exactly what the present Democratic administration had done. The idea met with opposition, however, because of the tradition that State papers had in the entire history of the committee been rigidly guarded until the matter to which they pertained had been concluded. That some of the proceedings of the Committee

did leak out, however, is obvious from the fact that on June 27, 1914, Mr. Stone complained that someone had broken the secrecy of the Executive Committee on Foreign Relations and had given to the press untrue statements of what had occurred in the Committees regarding the treaty. Mr. Stone, by authorization of the committee, denied the reports and proposed a resolution to investigate the source of the alleged information. The resolution was referred to the Committee to Audit and Control the Contingent Expenses (27) of the Senate. A more valid attempt to get the facts before the public was made on the floor of the Senate. Mr. Borah presented a resolution July 6, 1914 to the effect that the injunction of secrecy should be removed from all hearings held before that date except those which had been held under a pledge of confidence, that henceforth all hearings concerning the treaty should be made public, and that consideration of the treaty should be in open session (28) of the Senate. Mr. Borah contended that the purpose of considering treaties in executive session was to keep secret the details upon the part of the foreign government until negotiations were completed and that since that reason could not operate in the instance of the Colombian treaty, the entire proceedings should be in the open. The resolution was debated and Mr. Stone moved that it be referred (29) to the Committee on Foreign Relations. The motion was debated, but on the basis of an objection, the resolution (30) was carried over until the next day. On July 7, the reso-

lution carried over from July 6 was laid before the Senate by the chair. It was again carried over until the next Monday because of the absence of Mr. Stone, Chairman of the Committee on Foreign Relations. When it came up on Monday, July 13, Mr. Borah himself requested that it should be carried over for a third time. Finally, on July 15, when the resolution was laid before the Senate, Mr. Stone rose to a point of order, that a resolution referring to executive business must be considered in executive session. After debate, the chair ruled that the seal of secrecy against the proceedings of the Senate in executive session and in the Committee of Foreign Relations must be removed in executive session. Mr. Borah unsuccessfully took an appeal to the ruling of the chair. He had made a valiant though fruitless attempt to secure discussion of the treaty in open session.

One minor question of interpretation of the treaty was taken up by the Department of State in 1914. July 19, the Secretary of State notified the Colombian Minister that Paragraph 5, Article II was not to be interpreted as meaning that the Panama Railroad must at all times keep the railroad open and keep the rolling stock necessary solely for the purpose of carrying the commodities enumerated in the paragraph. He received an immediate reply from the Colombian Minister to the effect that the intention of Colombia with reference to the paragraph was that she should pay one half the freight charges on the same products of the

United States and not that the railroad must always be maintained exclusively for handling the Colombian products. With the one exception, the meaning of the provisions of the treaty was apparently clear to both parties. (33)

James T. Du Bois in an article written July 1, 1914 and quoted in an Extension of Remarks by Hon. H. Robert Fowler July 24, made some significant statements. He said (34) that out of regard for Roosevelt's feelings, the Government sent him to Bogotá with instructions which prohibited the success of his mission. He then proceeded to analyze the new treaty. He designated the first article as a simple expression of regret that the friendship of the two countries had been interrupted. He called attention to the fact that Article II and IV carried provisions identical with those approved by Roosevelt in the Root-Cortes treaty of 1909; and he answered at length Roosevelt's dictum, that Colombia was not entitled to a cent. According to Du Bois, under the contract of 1867 for the cession of the Trans-Isthmian Railroad Company to the Panama Railroad Company, Colombia was to receive \$250,000 annually for the life of the contract. At the time of the separation of Panama, sixty four annuities amounting to sixteen million dollars were still to be paid. The concession also gave Colombia reversionary rights in the Panama Railroad at the expiration of the contract in 1967, the value of which was estimated at \$16,446,000. Colombia also claimed several million dollars for the national debt incurred for the bene-

fit of Panama before the secession. Roosevelt asserted that all the financial interests of Colombia in Panama passed to Panama when separation was accomplished and that consequently the indemnity provision in the treaty was blackmail. Du Bois held that the United States had recognized the Colombian right of ownership by not compelling payment of the six installments (1903-1909) of the amortization of a debt contracted by Colombia with the railroad company, which was amortizable in twenty-nine years by the company's \$250,000 annual payments. After 1909 the railroad would have had to continue paying the \$250,000 annuity until 1967 when the property would have reverted to Colombia. Du Bois also said that he was urged not to publish the above statements because they would aid the Wilson administration, but he felt that party interests should be subordinate to the welfare of the country. The editor of Current Opinion characterized Du Bois' method of figuring as exceedingly naive, pointing out that a cash payment of \$6,250,000 at four per cent would take care of the sixty four annuities and that the cash value of the reversionary right of Colombia in the Panama Railroad would be not 16,446,000 but about one fifth of that amount.

Perhaps the evidence is not very conclusive but it points to the suspicion that the opposition to the treaty was in 1914 purely partisan. A review of the press supports the same conclusion. The Republican and Bull Moose Journals of which the Outlook was particularly vehement

denounced the treaty because it granted preferential rights in the canal to Colombia, because the payment of twenty five million dollars implying wrong-doing on the part of the United States was a payment of blackmail, because of the regret clause, and because it contained no provision for an option on the Atrato route which might easily fall into British hands. It was generally predicted that the Senate would not ratify the treaty. One notable exception to the journals opposing the treaty was the New York Journal of Commerce. Commercial interests were obviously already at work.

Roosevelt spoke in his own defense. In the latter part of June according to Current Opinion, he issued a long statement attacking the Colombian treaty - his first open attack on the Wilson administration. He said, "The (36) handling of our foreign affairs by President Wilson and Secretary Bryan has been such as to make the United States a figure of fun in the international world" and the treaty with Colombia "caps the climax of that policy." It was "merely the belated payment of blackmail with an apology to the blackmailers." He said, "What we did in Panama no more entitles Colombia to reparations than President Wilson's course in Mexico in forbidding the importation of arms and ammunition for the suppression of the revolt there, entitles Mexico to reparation from some future administration at Washington..... If we as a nation have been guilty of theft, we should restore the stolen goods. If we have not been guilty of theft we should not pay blackmail." He

also charged Du Bois with originating the apology in the informal memorandum presented to Colombia containing an unauthorized expression of regret which was almost the same as that of the Bryan treaty. Du Bois himself, according to Roosevelt, admitted that neither President Taft nor Secretary Knox ever considered it.

The origin of the regret clause was an important issue for the Republicans and Democrats in the days immediately following the presentation of the treaty to the Senate. A story in the Washington Post, June 20, 1914⁽³⁷⁾ said that Betancourt declared that the expression of regret originated with Taft and quoted the unofficial memorandum which was referred to above. It was in the following words: "The government and people of the United States sincerely regret the occurrence of the events that in any manner may have changed the long and sincere friendship which existed for almost a century between Colombia and the United States." The following day the Post referred to Dr. Betancourt's statement as substantiation of Bryan's contention before the Foreign Relations Committee and a contradiction of the Republican declaration that no phrase in the Taft negotiations could be found which could be interpreted as referring to "political events in Panama on November 1903."⁽³⁸⁾ The difficulty seemed to be in holding Taft responsible for the Du Bois memorandum which was indubitably unauthorized.

To return to the progress of the treaty, the Senate

delayed ratification regardless of the attempts of Colombia to incite them to action. Dr. Betancourt on August 3 urgently requested Bryan to continue his effort to secure approval of the treaty, pointing out the necessity of unifying American interests in view of the European conflict. He renewed his solicitations on August 15. (39) (40)

Mr. Thomson supported Dr. Betancourt in his endeavors. He notified the Secretary of State, August 29, 1914, that the new Colombian administration, desperately in need of funds, would gladly accept an amendment to pay the indemnity in installments. (41)

The offer met with no response however. On September 5, the Secretary of State communicated to Thomson the information that in spite of the President's desire to settle the matter, there was little hope for ratification at the present session, that the treaty had been referred to a sub-committee, and that Roosevelt demanded a hearing. (42)

He confirmed the correctness of his surmise in a note dated September 24. (43)

There was little interest shown in the Colombian treaty in the Senate of the United States in 1915. Mr. Ransdell, January 11, appealed to the commercial motive and the opportunity before America to enlarge her trade relations by taking advantage of the fact that Europe because of the war had been compelled to take her capital from Latin America. (44)

He lamented the fact that unfriendly feeling between the United States and Colombia prevented the former from taking over the languishing European trade with Colombia.

He quoted at length from a Spanish newspaper published in New York which elaborated upon the sentimental reasons for ratification, including the sorrow which all Latin America would feel if Colombia should be barred from the official inauguration of the Panama Canal. The same article gave the approaching conference of the secretaries of the treasuries of the Latin American nations as another reason for ratifying the treaty. It was necessary to the interests of America, so the article insisted, that these representatives should have faith in the obligations of the United States. At the conclusion of Mr. Ransdell's speech, Mr. Lodge said that he would say nothing concerning the treaty because the subject was executive business and should be discussed in executive session. (45) Mr. Lodge's dictum apparently stopped the discussion.

The impending Roosevelt hearings of which the Secretary of State had informed Mr. Thomson were held February 23, 1915. There is not very much information to be had concerning them, but Mr. Poindexter, April 18, 1921, secured permission to insert in the record the following extract from Roosevelt's statement to the Foreign Relations Committee: "The proposed treaty is a crime against the United States. It is an attack upon the honor of the United States which if justified would convict the United States of infamy. It is a menace to the future well-being of our people. Either there is or there is not warrant for paying this enormous sum and for making the apolo-

gy. If there is no warrant for it - and of course not the slightest vestige of warrant exists - then the payment is simply the payment of belated blackmail. If there is warrant for it, then we have no business to be on the Isthmus at all. The payment can only be justified upon the ground that this nation has played the part of a thief or of a receiver of stolen goods. In such a case it would be a crime to remain on the Isthmus, and it is much worse than an absurdity for the President who wishes to pay the twenty-five million dollars to take part in the opening of the canal; for if the President and Secretary of State are justified in paying the twenty-five million dollars it is proof positive that in opening the canal they are in their own opinion engaged in the dedication of stolen goods."⁽⁴⁶⁾

Mr. Bryan succeeded in satisfying Colombia with his explanations (pressing business and national defense) for the delay in the early part of 1915,⁽⁴⁷⁾ but by November the Colombian government had become very impatient. On the twenty-ninth of November, Dr. Betancourt sent a memorandum to Mr. Lansing, the new Secretary of State, in which he urged that the American Senate should approve the treaty for the following reasons:⁽⁴⁸⁾ (1) The Government of the United States took the initiative in the negotiations; (2) simple justice demanded reparation of the wrongs inflicted by Roosevelt; (3) Congress, by its failure to act was tacitly approving Roosevelt's wrong doing; (4) ratifica-

tion was necessary to commercial relations between the countries; (5) inhabitants of departments of the Pacific coast were restricted in their agricultural development by the difficulties of transit over the railroad and canal; and (6) relations with Panama were impossible under the existing situation. The memorandum was followed on December 2 by an openly resentful note which stated that failing prompt action on the treaty Colombia would withdraw from the Pan American Union. Mr. Lansing sent his earnest assurances of good faith to the Colombian Minister, December 21, but they no longer had the power to satisfy Colombia. Through Mr. Thomson, the Colombian Minister of Foreign Affairs continued his expressions of impatience. His arguments, transmitted to the Secretary of State in a note dated January 26 were almost identical with those submitted by Dr. Betancourt in the latter part of November. Dr. Betancourt in Washington carried on the campaign for ratification most forcefully. He notified Lansing, February 2, 1916 that the archives of the Colombian legation contained hundreds of letters from corporations and individuals who had invested or wished to invest capital in Colombia. The legation had assured them of a welcome for their enterprises when the barriers should be removed by ratification of the pending treaty. The capitalistic interests had then brought pressure to bear upon their Senators, a situation for which opponents of the treaty had reproached the Colom-

bian legation. Dr. Betancourt however disclaimed all responsibility for the efforts of the corporations to secure Senatorial action.

The constant battering of the Colombian government and the commercial interests finally stirred the Foreign Relations Committee to the point where, February 2, 1916, by the close margin of 8 to 7, they reported the treaty to the Senate with two amendments: (1) that the indemnity should be reduced to fifteen million dollars and (2) that the expressions of regret should be made mutual. It is impossible to discover the exact source of the amendments, but we know from Current Opinion of August 1914 that the New York World, which had taken a leading role in proffering charges against Roosevelt concerning the events of 1903, had suggested both amendments in the summer of 1914. The modifications proposed by the Foreign Relations Committee did not meet the approval of the Colombian government. Marco Fidel Suarez, the Minister of Foreign Affairs, expressed grave concern over the outcome of the treaty should they be adopted and asked, February 4, 1916, that the President of the United States should send a special message to the Senate, advising the ratification of the treaty without the amendments. Mr. Thomson felt that though the mutual regret clause would encounter strong opposition in the Colombian Congress and would be used by foreign interests to prevent the acceptance of the treaty, it would nevertheless ultimately

be accepted. Concerning the indemnity it was his belief that any amount less than twenty five million dollars would fail to accomplish the establishment of friendly relationships between the two countries, although, because of her financial straits, Colombia might reluctantly accept any offer which the United States made. (56)

Dr. Betancourt, who, at that time was anxious to leave Washington on account of his health, remained at his post to add his influence at what was considered a critical juncture. He kept hammering on the commercial theme as having the most popular appeal. On February 14, he gave a statement to the press in which he stressed the fact that innumerable commercial concerns were interested in developing the oil and coal lands as well as other natural resources of Colombia and that under the existing conditions they were seriously handicapped in their activities. (57) In Colombia itself a more compelling motive actuated the supporters of the treaty. Reports of German propaganda, which were later to become even more alarming, deeply concerned Mr. Thomson who notified the Secretary of State, February 15, 1916, that recent developments of foreign interests in Colombia convinced him that defense of the Panama canal was contingent upon the ratification (58) of the treaty in some form.

If all the agitation both at home and in Colombia had any effect upon the Senate however, it must have confined its discussions to executive sessions, for the Congression-

al Record showed nothing except a half hearted effort in the House of Representatives to have the treaty brought before the House on the strength of its revenue powers, (59) and the magazines contained only a few leisurely surveys of the history of the case and an analysis of the legal basis of the treaty.

The necessity of Colombian neutrality and the danger of German influence became of paramount importance by February, 1917. The American legation in Bogota was plainly disquieted, fearing that further delay might cause Colombia to withdraw her approval of the treaty in which case the United States might have to deal less advantageously with another country. (60) Psychologically, this argument was a most potent one at the time, but Colombia and the administration did not depend upon it solely. The need for protection of American capital and the appeal for simple justice were both presented as motives for ratification.

Through diplomatic channels the administration made every effort to allay the rising resentment in Colombia, explaining that the critical international situation had occupied the minds of Senators to the exclusion of all other business so that the sixty fourth Congress adjourned without changing the Status quo of the treaty. Colombia's apparent trust in the good faith of the administration did not prevent, however, a rapid succession of requests for action. At the suggestion of Senator Stone, the President called a special session March 5,

his chief purpose being to secure action on the treaty. Previously, on February 17, Mr. Wilson had written to
 (61)
 Senator Stone: "I take the liberty of writing to ask you if it will not be possible to press the pending treaty with Colombia again for ratification The main argument for the treaty and for its immediate ratification is, of course, that in it we seek to do justice to Colombia and to settle a long-standing controversy which has sadly interfered with the cordial relations between the two Republics. In addition to that argument, which should be conclusive, there is this only too obvious consideration, that we need now, and it is possible shall need very much more in the immediate future, all the friends we can attach to us in Central America where so many of our most critical interests center." Mr. Stone did not reply to the letter but issued a statement in the press in which he agreed with the President that business and national security demanded that the history of the case with its tendency to arouse partisan feeling should be subordinated to a consideration of the treaty on its merits, its importance in commerce and national defense. He regretted that there were enough Republican Senators to defeat the treaty if it should be brought to a vote in the Congress then in session, but stated that if the President should call an extra session, he would attempt to
 (62)
 settle the question.

When the Senate met in special session, the treaty

(63)

was referred again to the Committee on Foreign Relations (March 8, 1917) from where it was reported back to the Senate on March 14. ⁽⁶⁴⁾ Mr. Stone submitted the majority report which recommended that the treaty as amended should be ratified according to the form which the committee submitted. The mutual regret clause which appeared in the amendments of February 2, 1916 was retained. Article I, paragraph 1 of the original text of the treaty was thereby stricken out and for it was substituted, "The Governments of the United States of America and the Republic of Colombia in their own names and in the names of their respective peoples, wishing to put at rest all controversies and differences between them arising out of the events from which the present situation on the Isthmus of Panama resulted, express sincere regret that anything should have occurred to interrupt or mar the relations of cordial friendship that had so long subsisted between the two nations." Article V was to be numbered Article VI and a new Article V inserted to read as follows: "Neither the making of this convention nor any of the stipulations herein contained shall be considered to cast any doubt or shadow upon the title of the United States to the Panama Canal, which title the Government of Colombia recognizes as entire, absolute, and complete in the United States of America." The accompanying resolution for ratification contained one significant clause, viz., that the treaty as amended should be ratified provided that nothing in the

treaty should be construed to impugn in any way the past attitude, acts and motives of the United States Government." Roosevelt's friends had been at work.⁽⁶⁵⁾

Mr. Knox filed his separate views in which he highly approved the proviso just mentioned. He emphasized the non-partisan character of the provisions of the treaty and its similarity to the contemplated treaties of the previous Republican administrations and discounted the danger of Colombia's veering toward Germany in the impending international crisis. Justification for the treaty, he thought, lay in the mutuality of interests of Colombia and the United States in the Caribbean and in its contribution to the general welfare of the nation. Knox's support of the treaty occasioned considerable surprise because not only had he been a member of the cabinet during the Roosevelt and Taft administrations, but he had also been consistently opposing Wilson's foreign policy.⁽⁶⁶⁾⁽⁶⁷⁾

The Minority Report signed by Lodge, McCumber, Borah, Brandegee and Fall in no uncertain terms denied the charge of wrong doing against Colombia which according to their reasoning the payment of indemnity recognized as valid. The minority members of the committee objected to the treaty because: (1) the United States received nothing in return for an apology, twenty five million dollars and rights and privileges, (2) it violated the Hay-Pauncefote treaty, (3) it discriminated against other Latin American countries, and (4) Colombia could pass ships of enemies

of the United States through the canal by putting them under her own flag. Finally, they objected to any kind of a treaty with Colombia in view of her threats of hostility.
(68)

The reports of Colombia's responsiveness to German influence were too vague to be considered so seriously. Suarez, the Colombian Minister, considered the accusation of alliance with Germany as a fresh insult from certain public men of the United States, pointing out the evident impossibility of such a plan since no declaration either directly or indirectly had gone through diplomatic channels, the only way an alliance could be carried out.
(69)

Moreover, the Colombian Minister of Foreign Affairs, by order of the President of the Republic, issued a circular to the governors of departments May 8, 1917, urging them to maintain a neutral attitude lest they imperil the successful outcome of the negotiations, and properly attributing the charges of hostility not to the United States Government but to individuals.
(70)

Ex-President Reyes stated that Colombia would ally herself with the United States in case of war with Germany because the interests of all America were bound together by the principles of the Monroe Doctrine. Despite the validity or lack of validity of the charges, they furnished an effective argument and were equally effective in evoking strenuous opposition. One instance of the latter was the amusing attempt of Mr. Jones of Washington to discuss the question under cover of pre-

senting a memorial from his state legislature commanding support of the President in all measures. In spite of protests from Senator Williams and Senator Stone that he was talking about executive business, he discussed Wilson's views at length and vehemently argued with Lodge whom he quoted as saying: "I will not vote to betray gratuitously my country's honor and to drag her through the deepest humiliation by submitting to blackmailing threats and naked coercion from Colombia or any other state. It matters not whether her claim is meritorious or worthless. It must not be extorted from the United States by threats of war or of alliance with Germany."⁽⁷¹⁾

Ten Republican votes were needed to make the necessary two thirds, while only three Republicans, La Follette of Wisconsin, Gronna of North Dakota and Knox of Pennsylvania could be counted upon.⁽⁷²⁾ The treaty was therefore deferred until the extra session of Congress to be called April 16. It was felt that under the influence of public opinion, the sentiment of the Senate was gradually changing in favor of the treaty, and that the longer action was deferred, the greater was the possibility of success. The Secretary of State made his excuses to Colombia through the American legation at Bogotá and was successful in mitigating to some extent the resentment aroused by the press dispatches reporting the postponement.⁽⁷³⁾

Colombia refused to accept the mutual regret clause, characterizing it as a piece of irony unprecedented in the

(74)
history of diplomacy. Whether their refusal was a deciding
factor when the treaty was called for consideration on
April 16, it is impossible to say, but at any rate it was
(75)
again postponed and Dr. Betancourt left Washington feeling
that his three years of patient diplomatic effort to re-es-
tablish friendly relationships between the two countries
(76)
had been fruitless. The Wilson administration had failed
and the treaty was destined to be in obscurity until 1919.

CHAPTER V

COMPLICATIONS OF 1919

Theodore Roosevelt died January 6, 1919. His forceful personality no doubt had had a powerful effect upon his loyal followers and his death was very probably one of the factors which contributed to the prospect of an early approval of the treaty.

Diplomatic negotiations were resumed in February 1919. On the twenty seventh, Hoffman Philip of the American legation at Bogota submitted some new amendments to Dr. Molina, at that time the Colombian Minister for Foreign Affairs, pursuant to a conference on the question. The amendments
(1)
were as follows:

- (1) In the preamble, the phrase "is constructing" should be replaced by "has constructed."
- (2) Article I, the regret clause, should be omitted.
- (3) Article II should be numbered Article I
- (4) To the opening sentence of Article II which read "The Republic of Colombia shall enjoy the following rights in respect to the interoceanic canal and Panama Railway," should be added "the title to which is now vested entirely and absolutely in the United States of America, without any incumbrance or indemnities whatever."
- (5) In paragraph 1, Article II, which referred to transportation of troops through the canal, the words "even

in case of war between Colombia and another country" should be stricken out.

(6) In paragraph 4 of Article II which referred to transportation of troops, products and mails of Colombia by railway, the words "during the construction of the interoceanic canal and afterwards" also the words "even in case of war between Colombia and another country" and the last sentence, viz., "The provisions of this paragraph shall not apply however in case of war between Colombia and Panama" should be stricken out.

(7) Article II, paragraph 5, which read "Coal, petroleum and sea salt, being products of Colombia, passing from the Atlantic to the Pacific coast of Colombia or vice versa shall be transported over the aforesaid railway free of any charge except the actual cost of handling and transportation which shall not in any case exceed one half the ordinary freight charges levied upon similar products of the United States passing over the railroad and in transit from one port to another of the United States" should have inserted between the words "colombia" and "passing from" the words "for Colombian consumption" and between the words "shall" and, "be transported" the words "whenever traffic by the canal is interrupted".

(8) Article III should be numbered Article II

(9) The indemnity clause, instead of providing for a lump sum payment should be made to read as follows: "The Gov-

ernment of the United States of America agrees to pay at the city of Washington to the Republic of Colombia the sum of twenty five million dollars, gold, United States money as follows: the sum of five million dollars shall be paid within six months after the exchange of ratifications of the present treaty, and, reckoning from the date of that payment, the remaining twenty million dollars shall be paid in four annual installments of five million dollars each."

(10) Articles "IV" and "V" should be numbered "III" and "IV" respectively.

On the same day Dr. Molina in behalf of his government accepted the modifications giving his assurances that the indemnity would be used for public works and for furthering commerce and that in awarding contracts for public improvements American citizens would be given
(2)
due consideration.

Senator Lodge later told the story that the amendments were the result of an interview which he had with Lansing after the treaty was laid aside in 1917 and represented the combined thought of Knox, Root, Lansing
(3)
and Lodge himself.

The treaty was referred to the Senate Committee on
(4)
Foreign Relations May 29, 1919 and was reported back with amendments July 29, 1919 and ordered to be printed
(5)
July 31. A comparison of the amendments submitted by the Foreign Relations Committee shows that they were

identical with those for which Hoffman Philip had earlier secured the approval of Colombia with the further resolution that the Senate should ratify only with a definite understanding that Section I of Article I which referred to the free passage through the Panama canal of Colombian troops, materials and ships of war should not apply in case of war between Colombia and any other country. (6)

Two objectionable features of the treaty had been modified (Colombia's privileges in the canal zone had been lessened and the omission of the words of apology had left it only by implication) and appearances pointed toward ratification. (7) However what its fate would have been can only be surmised, for another stumbling block was unexpectedly interposed which was to delay the action of the Senate for another year and a half.

Mr. Lodge on August 7 asked that the treaty be recommended to the Committee on Foreign Relations because the Committee had received information from the State Department that the Colombian government had issued a decree which would imperil American rights in the leasing and ownership of oil lands and they felt that a thorough investigation of the report should precede consideration of the treaty. (8) The request was agreed to.

A subcommittee of the Foreign Relations Committee consisting of Senators Fall, Smith of Arizona and McCumber (9) took the new problem under consideration and decided that it would have to be settled by an amendment to the

treaty. The first draft of the amendment was confidentially forwarded by the Secretary of State to the American legation at Bogota' on August 9 in order that its reception by the Colombian government might be ascertained. The amendment was as follows: "The signatories agree that neither will by decree, law, departmental circular, constitutional amendment, or through the acts of their legislative, executive or judicial departments in any way nullify or alter or question the rights of the other signatory to real estate, mines, petroleum deposits, or any other like property in its country acquired prior to the exchange of ratifications of this treaty unless in the title, documents, or written contracts, whether public or private, under which such real estate or other property is claimed or held, specific reservations or limitations are made and set forth."⁽¹⁰⁾

The government was merely trying to protect acquisitions of Americans made in good faith and now threatened with confiscation under the Colombian policy of nationalization of oil lands, and was not in any way attempting to dictate to Colombia as to her disposition of public property.⁽¹¹⁾ Colombia however refused to introduce into the treaty any provision foreign to its main theme but assured the United States that American rights would be protected; that if a formal agreement to that effect should be deemed necessary by the United States government, Colombia would be glad to arrange a separate protocol; that the petro-

leum decree was suspended as dealing with a matter the regulation of which belonged to Congress; and that legislation on the question was under consideration which under the terms of Article 31 of the Colombian constitution would have to protect rights of Americans as well as Colombians. (12)

The diplomatic correspondence in the summer of 1919 disclosed the fact that several large American institutions in Colombia, the American Bank, the Santa Marta Railway, the United Fruit Company, and the Platinum Company, had complained to their government concerning disagreements with the Colombian government. The latter expressed itself as willing to make any necessary adjustments concerning these points in addition to the oil interests, but the treaty should not be changed to include them. (13)

The Government of the United States yielded on the proposition of settling the new difficulty through an amendment to the treaty but the Foreign Relations Committee was adamant on the question of securing an agreement from the Colombian government defining its intentions pertaining to property rights, of which subsoil rights were the most important. Colombia attempted to effect a trade with the United States. In return for the new conditions which the United States government was imposing for ratification of the treaty, Colombia asked that the exemptions of Article II pertaining to (14)

coal, salt and petroleum and the clause of the treaty relating to the passage of warships at all times should not be modified. Nothing came of the Colombian request, but the two countries continued through diplomatic channels their efforts to arrive at a conclusion concerning the disposition of subsoil rights.

On October 11, 1919 the following proposed agreement was submitted to the Colombian Minister at Washington: (15) "Whereas it is provided by Article 13 of the treaty between the United States of America and New Granada signed December 12, 1846, that each country shall formally engage and promise to give its special protection to the persons and property of the citizens of each other within the respective territories of each; and whereas no definition of property rights is contained in Article 13, and modern development has rendered it necessary in some instances to arrive at mutual understanding and agreement as to such rights, and it is apparent that it will be of mutual benefit to each government and at the same time promote better understanding and more cordial relations in the future that property and property rights protected under the treaty shall be defined more clearly, particularly as they relate to non metalliferous minerals, it is hereby agreed that:"

Article I

"The term 'property' as used in Article 13 of the said treaty shall be held to mean and to comprehend and

include real estate, mines, minerals and petroleum deposits, or other similar property."

Article II

"Neither of the high contracting parties shall in anyway nullify the rights of citizens of the other contracting party in or to real estate, minerals and petroleum deposits or other similar property. From here follow the phraseology as cabled to Bogota' on August 29."

The department's telegram of August 28 (no telegram was given for August 29), which was handed to the Colombian Minister for Foreign Affairs by Minister Philip September 1, 1919, stated that the property to which reference is made above comprised that which had been "acquired before the execution of agreement unless specific limitations upon or reservations of such rights are made and set forth in the written contracts or documents of title whether public or private". The telegram further stated that this definition of rights should serve as a basis for the settlement of any further altercation arising out of the attempt of either power "to nationalize property acquired by its nationals through any deed, lease, contract or concession wherein the title to such property does not distinctly set forth specific limitations or reservations which authorize such subsequent limitations or nationalization. Parties will fully recognize each nation's general rights of sovereignty within its own boundaries including the right to enact

revenue and other legislation. Neither power will discriminate against citizens of the other in government franchises, grants, leases or contracts or other means by which titles, interests or property rights are acquired within its boundaries but will in every way protect such citizens in enjoyment of his rights."

Mr. Hoffman Philip, American Minister to Colombia again on October 21 urgently presented the question of the ownership of subsoil rights to the Acting Minister (17) of Foreign Affairs of Colombia. The memorandum which he submitted contained nothing new, but was simply a reiteration of previous demands coupled with an assurance that a solution of the problem would remove all obstacles to the treaty and encourage the investment of foreign capital in Colombia. Mr. Philip's memorandum was referred (18) to the Colombian Congress, where its contents no doubt had some influence upon the Petroleum Law of December 29, 1919, which with a Supreme Court decision settled the question in a manner satisfactory to the United States. The law provided that the subsoil of privately owned lands belonged to the owner of the soil and that the ownership of petroleum deposits on vacant lands awarded before 1873 came under the same head. All such lands might be freely exploited by their owners subject to an exploitation tax (19) as specified in the law.

Even those who justify the action of the United States government in insisting upon a solution of the subsoil

question prior to the acceptance of the treaty must have a difficult time in vindicating its further attempt to make the ratification of the treaty contingent upon the award of certain contracts to citizens (20) of the United States. The President of Colombia rightfully expressed his resentment at such action, reminding the United States that Colombia had by her own initiative already completed or begun transactions favorable to American capital, mentioning the Tropical Oil Company and the contract for the Pacific Railroad as evidences of good faith. Mr. Philip hastened to correct the impression that the opinion of the efficacy of the celebration of any such contracts in securing ratification of the treaty was official, insisting that it was only his personal idea of a course which would inspire confidence and secure a favorable public attitude (21) towards the treaty.

A letter from Dr. Urueta of the Colombian legation March 26, 1921 showed that there was still agitation for amendments treating of questions foreign to the treaty and which had already been settled in the laws (22) of the country. To what could the reference be if not to the Petroleum Law of 1919? The inference is clear that oil figured largely in the final consideration of the treaty in the spring of 1921. That it was equally effective in delaying the treaty until that time is only a suspicion but when some effort was made in December,

1920 to bring up the treaty, there were some mysterious
"weighty objections" to its consideration although Mr.
Fall, who had charge of the treaty in the committee, was
(23)
anxious to submit it.

CHAPTER VI

FINAL DEBATE AND RATIFICATION

On April 11, 1921 Senator Lodge gave notice that on the next day the Senate would be asked to go into open executive session to consider the Colombian treaty⁽¹⁾ and thus for the second time in the history, the other instance being the Peace Treaty of Versailles, the Senate began an open debate upon a treaty. The public was ostensibly taken into its confidence, though in actuality not to so great an extent as appearances indicated, for the most potent forces back of the treaty did not appear upon the surface as the primary reasons for ratification.

The next day after President Harding's message was read urging immediate and favorable consideration of the treaty, Senator Lodge, chairman of the Foreign Relations Committee and leader of the majority on the floor, led the fight⁽²⁾ for ratification. His introductory speech was a masterly retreat from his former position. As a preliminary to his "right-about-face" he glorified Roosevelt's conduct and criticized adversely both the conduct and motives of Colombia. He approved the Root-Cortés theory, admitting that it was all right to buy Colombia's recognition of Panama and the settlement of Panama's share of the public debt of Colombia,

thereby anticipating the objection to the payment of the twenty five million dollars. He then commented upon the Bryan treaty as impossible of acceptance when it was first reported to the Senate on account of the apology, the too liberal exception in regard to rights of transit, the threats of Colombia to ally with Germany, and the excessive money payment. Since the apology had been removed and the rights of transit curtailed by amendment and since the threats of hostility were no longer pertinent, Lodge was willing to let the indemnity stand for the sake of restoring friendly relations. He discussed the origin of the amendments of 1919 inferring that they met Roosevelt's approval, and disposed of the allegation that the treaty had been taken up merely because Harding had asked it by emphasis upon the fact that the same treaty had been favorably reported in June 1920 before any nomination had been made for the Presidency. He excused the fact that both the June and December sessions of 1920 had ignored the treaty on the grounds of more pressing business and lack of time. He pointed out the importance of the geographical situation of Colombia, the good harbors on both coasts, the strategic position with regard to the canal, the advantage of fixing the international status of Panama and the necessity of building up South American commerce to take the place of the constantly decreasing European trade, calling attention to the fact that the present treaty would be followed by a general

treaty of amity and commerce which would be invaluable to American business.

Finally he came to oil. He said that he knew nothing about the alleged support of the treaty by the oil interests, a statement which could not be construed as an absolute denial. Then he proceeded to indicate the significance of oil to commercial carriers and naval defense. With England in control of the Royal-Dutch-Shell Combine which reached all over the world, the United States should protect her citizens who were investing in the enormous oil fields which were opening up in Venezuela and Colombia and not force them through neglect to appeal to British interests as had already happened in the case of one American Company.

Senator Lodge's arguments by virtue of his position as an authority on foreign affairs were of considerable influence in molding doubtful Senatorial opinion. Of even greater importance in changing the opinion of the staunch admirers of Roosevelt was the fact that Lodge and Roosevelt had long been intimate friends and that Roosevelt apparently did not object to the amended treaty.

To support his contentions, Mr. Lodge introduced two letters written March 21, 1921 by Albert D. Fall, Secretary of the Interior. It is noteworthy in considering Secretary Fall's attitude at this time that he was one of the signatories of the minority report of the committee in 1917. Moreover in June 1918 in a speech in the

Senate, he declared the treaty was a violation of the Hay-Pauncefote treaty and of the favored nation clause with every nation with which the United States had such an agreement and was an "outrage against every principle of international comity"⁽³⁾. In his letters, he explained his altered point of view as due to the fact that the objectionable features of the 1917 treaty had been changed by amendment and that he had been led by Colombian officials to believe that the present treaty would be followed by another which would incorporate a number of propositions which, added to the pending treaty, had met Roosevelt's hearty approval when submitted to him by Fall in 1917.⁽⁴⁾ The propositions were as follows: (1) The United States was to obtain title to the islands near the canal zone owned by Colombia. (2) The United States should acquire an option on the Atrato route for a canal. (3) Neither country should let its ports, coasts or territory be used by countries with which the other was at war. (4) Each country should allow the other the use of its shores in defending the Panama Canal.⁽⁵⁾

The second letter concerned itself with oil, Mr. Fall frankly admitting that the oil interests were backing the treaty - they were intelligent business men who realized the seriousness of the oil crisis and who recognized the interdependence of political and commercial relationships. The British, so the letter stated, were in control of the oil fields of Venezuela while American

investors had the strongest foothold in Colombia, and, in view of the British activities, support of American vested interests in Colombia warranted any action, however extreme which was compatible with national self-respect. (6) Mr. Fall unflatteringly credited the Senators with considerable naivete in not expecting them to see that Roosevelt's approval of the pending treaty with the additional propositions was an entirely different matter from the treaty alone, unaccompanied by any official assurance from Colombia of further negotiations embodying the points mentioned by Mr. Fall.

In the debate on the treaty, the Senators lined themselves up in three groups, those Democrats with the point of view of Wilsonian days who believed that Roosevelt had done Colombia a grievous wrong and that justice could be brought about only by reparation, those irreconcilable adherents of Roosevelt who considered that the treaty impugned his motives and that the indemnity was a payment of blackmail, and finally the middle group led by Lodge who disavowed any wrong-doing in connection with the acquisition of Panama but would ratify the treaty as a matter of expediency.

The first group was decidedly in the minority, having only four spokesmen, all Democrats, the most prominent of whom was Senator Pomerene of Ohio. He was supported by Wolcott of Delaware, Williams of Mississippi and Smith of South Carolina. Mr. Pomerene after a lengthy re-

view of the history of the case, so stated as to substantiate his point of view, regretted that the great canal achievement was blotted by the methods used in acquiring the canal zone and was glad to ratify a treaty which would establish in the eyes of the world the essential justice of a great nation. Mr. Williams' standard of ethics did not reach to such great heights. In his opinion the end justified the means, devious though they were, but nevertheless an international wrong had been committed and due reparation must be made. Mr. Wolcott and Mr. Smith agreed that Colombia had a just grievance, that the United States had violated the treaty of 1846 and had too precipitately recognized Panama, which constituted a just basis for reparation.

Those who spoke in opposition to the treaty were for the most part westerners and Republicans of the insurgent wing although three Democrats, Watson of Georgia, Reed of Missouri and Dial of South Carolina were equally as violent in their opposition. The Republican group consisted of Kellogg of Minnesota, Lenroot of Wisconsin, Johnson of California, Poindexter of Washington, Townsend of Michigan, Norris of Nebraska, Wadsworth of New York, Kenyon and Cummins of Iowa, and Borah of Idaho. They reviewed the history of the Panama Revolution and interpreted the same facts which were used by the proponents of the treaty as justification for reparation to show that the United States government and everyone

connected with it was guiltless and that the treaty with its implications branded Roosevelt and the nation with shame and dishonor. They directed their attention particularly to provisions of the treaty which promised trouble for the future. One of their chief arguments was that the special canal privileges granted to Panama were a violation of (10) the Hay-Pauncefote treaty which provided that "the canal shall be free and open to the vessels of commerce and of war of all nations observing these rules on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens, or subjects, in respect of the conditions or charges of traffic or otherwise. Such provisions and charges of traffic shall be just and equitable." The Senators felt that Great Britain might protest. Great Britain had protested to the same provision in the Root treaties but withdrew the protest after Secretary Root explained that the provision grew out of the special position of Colombia toward the canal and the title thereto and would not be used as a precedent for departing from the Hay-Pauncefote treaty in the case of any (11) other nation. Article II, clause 2 concerning the charges on Colombian products passing through the canal was also violently denounced as contrary to the favored nation clause in the treaties of amity and commerce which (12) the United States had with other countries. When this argument was met with the statement that the United States did not use the unconditional form of the favored nation

agreement, the scathing reply was that any nation would be glad to meet the conditions, (in fact the whole world had already granted them) the concession of the title of the United States to the canal and the recognition of Panama. Other items in the diatribe against the treaty were that it would be the beginning of general demands from other states which were victims of America's highhanded policy, Haiti, San Domingo, Nicaragua, Costa Rica and Mexico, that it was in contravention of the Republican (13) economy campaign pledge and that it would not attain its purpose, the friendship of Central and South America, because friendship could not be bought.

In support of his conviction of the folly of attempting to buy the friendship of Colombia, Mr. Kellog introduced a letter from Thomas Ceron Camargo, a Colombian student of international finance, to Theodore Roosevelt, written March 13, 1917 as follows: "For your information I am sending you a transcription of my letter to three of the leading New York papers. I think that I am representing fairly the honorable stand of the Colombian youth with whom the youth of this country will have to mingle and do business in the future.

We accept the Canal of Panama as an accomplished fact and as a monument useful to mankind, but any arrangement between the politicians of my country and those of the United States to settle this affair on a money consideration will spoil forever the intercourse of our

future generations." The letter was followed by a note to the editor in which Mr. Camargo said that some amends must be made but that settlement on a money basis would
(14)
be unacceptable.

Neither did the vindictive gentlemen of the opposition mince words in their thorough slaughter of the turncoats, the Republicans to whom the "infamous crime of Woodrow Wilson in maligning the life and character of Theodore Roosevelt had become a divine proceeding under
(15)
a Republican administration, and who supported the treaty because Secretary Fall had "pipe-lined an oil proposition into it."
(16)
Mr. Kenyon prophesied that the American people would not find it any easier to swallow the dose of government extravagance because the bottle bore
(17)
the brand "Taken in Oil," and Senator Watson thought that if the government wanted to buy property for the Standard Oil Company, it should act openly instead of indirectly subsidizing the oil interests to the extent
(18)
of twenty five million dollars.

Before considering the last and most influential faction in the ratification of the treaty, a word should be said about the position of Senator Knox who had been a member of the cabinet under both the Roosevelt and Taft administrations and who might therefore not have been expected to support the Wilson-Bryan document. He was entirely outside our classification, advancing the rather unique theory that while the United States did

no wrong to Colombia, if in the exercise of their rights, damage resulted to Colombia and corresponding benefits accrued to them, Colombia, according to all principles of international morality, should be compensated not for what she lost but for what the United States gained, the gain to be measured by the difference between the Hay-Her-
(19)
ran treaty and the Hay-Bunau-Varilla treaty.

The Lodge group even when augmented by the reparationists was smaller, numerically, than the opposition, but they were obviously convinced of the mightiness of their arguments and smugly satisfied over the ultimate fate of the treaty, for it was apparent from the outset of the final debate that discussion was not much more than a farce after the cards were exposed and that the
(20)
treaty was destined to go through. The only members of the Lodge group who spoke in defense of the treaty were New of Indiana, Shortridge of California, Ransdell of Louisiana, McCumber of North Dakota and Sterling of South Dakota. Ransdell belonged to the Democratic party while all the others were Republicans. Of the members of the Foreign Relations Committee who filed the minority report in 1917, only Borah had remained loyal to his convictions. Brandegee took no active part in the debate but he voted in favor of the treaty and the other three, Lodge, Fall and McCumber had succumbed to the oil interests.

Mr. Sterling wished to ratify the treaty to promote

the general advancement of American trade and commerce southward and because of some future contingency in which the United States might need the assistance of Colombia in the defense of the canal. He did not mention oil specifically. (21)

Mr. New was also anxious concerning the future prospects of the foreign trade of the United States, adversely affected by the World War, and felt that the United States should make every effort to establish a feeling of friendliness and good will in Central and South America which would offset European propaganda against American interests.

Senator Shortridge was more selfishly local in his motives - he thought that the treaty would be of benefit to California and the Pacific Coast in that it would eliminate the danger of some Asiatic or European country establishing a naval base in Colombia as Japan had attempted at Magdalena Bay. He also thought that trade and commerce would be benefited by the treaty and that it was the duty of the government to protect the rights and property of Americans in Colombia, and finally he would ratify the treaty because President Harding had asked it. (22)

In enumerating in A-B-C fashion the reasons why the treaty should be ratified, Senator Ransdell literally exhausted the alphabet and although he justified the treaty partially on the basis of the justice of recognizing the Colombian claims, he duly emphasized the economic fac-

tors. Trade between the United States and Colombia, he pointed out, had endless possibilities. Moreover, the commerce of all Latin America was growing rapidly and while two thirds or three fourths of it should go to the United States, less than one half had been handled by that government in 1919. Mr. Ransdell discounted the validity of the charges that the oil interests furnished the primary motive for ratification of the treaty, but then proceeded to say that American business men had a right to try to get for themselves what the business men of England, France and Germany were attempting to secure and that if their investments were made honestly they should be protected by their government. (23)

McCumber, like Lodge, was positive and unequivocal in his statements that the United States was under no moral or legal obligation to Colombia as a result of Roosevelt's action in acquiring the right to construct and operate the canal and that the payment of the twenty five million dollars was not the purchase price of Colombia's good will. It was for the liquidation of Colombia's reversionary rights in the Panama Railroad. With Lodge, also, he frankly admitted that the nation was vitally interested in petroleum and that the opportunities which would be opened to American capital in the development of the vast oil fields of Colombia as a result of the restoration of friendly feeling above all justified the ratification of the treaty. Finally he was placing great (24) (25)

expectations in a subsequent treaty of amity and commerce, with faith in the President's success in realizing his hopes as the initial step of his foreign policy.
(26)

Before the treaty came to a final vote a number of individual amendments were proposed. Since all of them were defeated, they were relatively insignificant, but nevertheless they should have a place in a complete legislative history of the treaty.

Under a unanimous consent agreement which had been agreed to in advance, debate was discontinued and voting began at four P.M. April 20, 1921.
(27)

Mr. Poindexter presented an amendment which would place the products of the soil and industry of Colombia in the use of the canal on the same basis as those of other countries under the treaties and laws of the United States instead of on the same basis as those of the United States. The amendment lost 30 to 59, seven not voting.
(28)

Mr. Poindexter also proposed to strike out section 1 of Article I which read as follows: "The Republic of Colombia shall be at liberty at all times to transmit through the interoceanic canal its troops, materials of war, and ships of war, without paying any charges to the United States." The amendment lost 28 to 61, seven not voting.
(29)

the line-up being practically the same.

An amendment presented by Mr. Wadsworth changed Article I, section 1 to read: "The Republic of Colombia shall

be at liberty except during war between Colombia and another country with which the United States is at peace, to transport through the interoceanic canal its troops, materials of war, and ships of war without paying any charges to the United States." The amendment was rejected 39 to 50, the same seven not voting.

Another amendment of Mr. Poindexter reducing the indemnity from twenty five million to fifteen million dollars was rejected by a vote of 22 to 68, seven not
(30)
voting.

Mr. Ransdell's amendments comprised a series of
(31)
radical changes in the treaty: (1) The amplification of the preamble by which the two countries would leave the past in a spirit of forbearance to the judgment of History and enter into an alliance for the mutual protection of their common interests, (2) an agreement that no canal should be constructed through Colombian territory without the assent and cooperation of the United States, (3) a mutual agreement for the defense of the Panama canal, (4) cession to the United States of the Providence and St. Andrews Islands in the Caribbean Sea, (5) payment of thirty million dollars to Colombia in addition to a loan of twenty five million for public improvements. All Mr. Ransdell's amendments were promptly rejected.

Senator Borah showed his loyalty to Roosevelt to the last by proposing an amendment which read: "That

neither said payment nor anything contained in this treaty shall be taken or regarded as an admission that the secession of Panama in November, 1903 was in any way aided or abetted by the United States of America, its agents, or representatives, or that the said government in any way violated its obligations to Colombia." Mr. Borah first proposed his amendment in the Committee of the Whole where it was rejected 39 to 49, eight (32) not voting. After all the Committee amendments had been accepted, the treaty was reported to the Senate as amended. Before the Senate concurred in the amendments made as in the Committee of the Whole, Mr. Borah again offered his amendment. This time it was rejected by a vote of 30 (33) to 58, eight not voting. The Senate then concurred in the amendments made as in the Committee of the Whole.

The resolution of ratification with the understanding to be made part of the treaty that the provisions of section 1, Article I, granting Colombia "free passage through the Panama Canal for its troops, materials of war, and ships of war shall not apply in case of war between the Republic of Colombia and any other country," was then adopted by a vote of 69 to 19, eight not voting because of pairing arrangements. Forty Republicans and twenty nine Democrats voted for the treaty. Fifteen Re- (34) publicans and four Democrats voted against it.

In conveying the news of ratification to the Colombian Minister of Foreign Affairs, Herbert Gould, who had

succeeded Hoffman Philip as American Minister was careful to make clear that the additional understanding in the resolution of ratification must be accepted by the Colombian government that there might be no error in the subsequent interpretation of the amendment to Article II of the original text. Secretary of State Hughes sent the same information to Dr. Urueta, the Colombian Minister at Washington April 29, 1921. When the Colombian Congress was considering the ratification of the treaty as amended, they insisted upon a definite interpretation of the understanding mentioned above. September 27, 1921, the Colombian Minister submitted to Hughes his interpretation in which he said, "We understand that in a state of war between Colombia and any other country, Colombia will not be placed under disadvantage in the Panama Canal by operation of the declaration of the Senate when it ratified the treaty of April 6, 1914 with regard to transportation of her troops and warships and material as compared with the other belligerent or belligerents." Hughes, after discussing the question with Senator Lodge, replied October 3, 1921, that "the Republic of Colombia would not have the right of passage, free of tolls, for its troops, materials of war, and ships of war in any case of war between Colombia and some other country. The effect of that would be to place the Republic of Colombia, when at war with another country, on the same footing as any other nation under similar conditions, as provided in the Hay-

(38)
Pauncefote treaty concluded in 1901."

Through a law passed on December 24, 1921 the Colombian Congress approved the amendments to the Treaty of April 6, 1914. (39) The treaty was then ratified by the President of the United States January 11, 1922 (40) and by the President of Colombia March 1, 1922. (41) The exchange of ratifications was effected on March 1, 1922 (42) and the covenant thereby went into operation.

Secretary Hughes, in his acknowledgment of the notice of exchange, expressed his belief that the treaty justified the "deepest gratification and the most sanguine expectations with respect to its beneficent effects." (43)

After five years a study of the foreign commerce of the United States and Latin America and of American activities in the oil industry of Colombia would be interesting in the light of what happened in 1921. But that is another problem. At least no treaty of amity and commerce such as Secretary Fall outlined has ever been concluded.

THE END

APPENDIX

(1)
TEXT OF THE TREATY

The United States of America and the Republic of Colombia, being desirous to remove all the misunderstandings growing out of the political events in Panama in November 1903; to restore the cordial friendship that formerly characterized the relations between the two countries, and also to define and regulate their rights and interests in respect of the interoceanic canal which the Government of the United States (is constructing) has constructed across the Isthmus of Panama, have resolved for this purpose to conclude a treaty and have accordingly appointed as their Plenipotentiaries: His excellency the President of the United States of America, Thaddeus Austin Thomson, Envoy Extraordinary and Minister Plenipotentiary of the United States of America to the Government of the Republic of Colombia; and his Excellency the President of the Republic of Colombia, Francisco José Urrutia, Minister for Foreign Affairs; Marco Fidel Suarez, First Designate to exercise the Executive Power; Nicolás Esguerra, Ex-Minister of State; José María González Valencia, Senator; Rafael Uribe Uribe, Senator; and Antonio José Uribe, President of the House of Representatives, who, after communicating to each other their re-

spective full powers, which were found to be in due and proper form, have agreed upon the following:

(Article I)

(The Government of the United States of America, wishing to put at rest all controversies and differences with the Republic of Colombia arising out of the events from which the present situation on the Isthmus of Panama resulted, expresses, in its own name and in the name of the people of the United States, sincere regret that anything should have occurred to interrupt or to mar the relations of cordial friendship that had so long subsisted between the two nations.)

(The Government of the Republic of Colombia, in its own name and in the name of the Colombian people, accepts this declaration in the full assurance that every obstacle to the restoration of complete harmony between the two countries will thus disappear.)

Article (II) I

The Republic of Colombia shall enjoy the following rights in respect to the interoceanic canal and the Panama Railway: the title to which is now vested entirely and absolutely in the United States of America, without any incumbrances or indemnities whatever

1. The Republic of Colombia shall be at liberty at all times to transport through the interoceanic canal its troops, materials of war, and ships of war,

(even in case of war between Colombia and another country) without paying any charge to the United States.

2. The products of the soil and industry of Colombia passing through the canal, as well as the Colombian mails, shall be exempt from any charge or duty other than those to which the products and mails of the United States may be subject. The products of the soil and industry of Colombia, such as cattle, salt and provisions, shall be admitted to entry in the Canal zone, and likewise in the islands and mainland occupied or which may be occupied by the United States as auxiliary and accessory thereto, without paying any other duties or charges than those payable by similar products of the United States.

3. Colombian citizens crossing the canal zone shall, upon production of proper proof of their nationality, be exempt from every toll, tax or duty to which citizens of the United States are not subject.

4. (During the construction of the Inter-oceanic Canal and afterwards, whenever) Whenever traffic of the Canal is interrupted or whenever it shall be necessary for any other reason to use the railway, the troops, materials of war, products and mails of the Republic of Colombia, as above mentioned, shall, (even in case of war between Colombia and another country) be transported on the Railway between Ancon and Cristobal or on any other Railway substituted therefor, paying only the same

charges and duties as are imposed upon the troops, materials of war, products and mails of the United States. The officers, agents, and employees of the Government of Colombia shall upon production of proper proof of their official character or their employment also be entitled to passage on the said Railway on the same terms as officers, agents and employees of the Government of the United States. (The provisions of this paragraph shall not, however, apply in case of war between Colombia and Panama.)

5. Coal, petroleum and sea salt, being the products of Colombia, for Colombian consumption passing from the Atlantic coast of Colombia to any Colombian port on the Pacific Coast, and viceversa shall, whenever traffic by the Canal is interrupted, be transported over the aforesaid Railway free of any charge except the actual cost of handling and transportation, which shall not in any case exceed one half of the ordinary freight charges levied upon similar products of the United States passing over the Railway and in transit from one port to another of the United States.

Article (III) II

The Government of the United States of America agrees to pay at the City of Washington to the Republic of Colombia, (within six months after the exchange of the ratifications of the present treaty) the sum of twenty five million dollars, gold, United States money as

follows: The sum of five million dollars shall be paid within six months after the exchange of ratifications of the present treaty, and reckoning from the date of that payment, the remaining twenty million dollars shall be paid in four annual installments of five million dollars each.

Article (IV) III

The Republic of Colombia recognizes Panama as an independent nation and taking as a basis the Colombian law of June 9, 1855, agrees that the boundary shall be the following: From Cape Tiburon to the headwaters of the Rio de la Miel and following the mountain chain by the ridge of the Gandi to the Sierra de Chugargun and that of Kali going down by the ridges of the Nigue to the heights of Aspave and from thence to a point on the Pacific half way between Cocalito and La Arvita.

In consideration of this recognition, the Government of the United States will, immediately after the exchange of the ratifications of the present treaty, take the necessary steps in order to obtain from the Government of Panama the dispatch of a duly accredited agent to negotiate and conclude with the Government of Colombia a Treaty of Peace and Friendship, with a view to bringing about both the establishment of regular diplomatic relations between Colombia and Panama and the adjustment of all questions of pecuniary liability as between the two countries, in accordance with recognized

principles of law and precedents.

Article (V) IV

The present treaty shall be approved and ratified by the High Contracting Parties in conformity with their respective laws, and the ratifications thereof, shall be exchanged at the City of Bogotá, as soon as may be possible.

In faith whereof, the said Plenipotentiaries have signed the present Treaty in duplicate, and have hereunto affixed their respective seals.

Done at the city of Bogotá, the sixth day of April in the year of our Lord nineteen hundred and fourteen.

(Signatures)

In Executive Session, Senate of the United States.
Resolved, two-thirds of the Senators present concurring therein, That the Senate advise and consent to the ratification of the treaty signed at Bogotá April 6, 1914, between the United States and the Republic of Colombia, for the settlement of their differences arising out of the events which took place on the Isthmus of Panama in November 1903 with the following amendments: (2)

Resolved further, That the Senate advise and consent to the ratification of the treaty signed by the Plenipotentiaries of the United States and the Republic of Colombia on April 6, 1914, providing for the settlement of differences between the United States and the Republic

of Colombia, with the understanding to be made a part of such treaty and ratifications, that the provisions of section 1 of Article I of the treaty granting to the Republic of Colombia free passage through Panama Canal for its troops, materials of war and ships of war, shall not apply in case of war between the Republic of Colombia and any other country.

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- (2) The amendments are omitted because they are incorporated in the text of the treaty.

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